

73708

REPORTER'S RECORD

VOLUME 1 OF 25 VOLUMES

TRIAL COURT CAUSE NO. 800112

CHARLES MAMOU, JR. ) IN THE DISTRICT COURT  
Appellant )  
VS ) HARRIS COUNTY, TEXAS  
THE STATE OF TEXAS )  
Appellee ) 179<sup>TH</sup> JUDICIAL DISTRICT

\*\*\*\*\*

MASTER INDEX

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On the 7<sup>th</sup> day of September, 1999, the following proceedings came on to be heard  
in the above-entitled and numbered cause before the Honorable Bob Burdette and Judge  
Michael Wilkinson, Judge Presiding, held in Houston, Harris County, Texas:

Proceedings reported by computer aided transcription/stenograph machine.

**FILED IN**  
**COURT OF CRIMINAL APPEALS**

MAR 2 1 2000

Troy C. Bennett, Jr., Clerk

**ORIGINAL**



**DISK  
ENCLOSED**

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## REPORTER'S RECORD

VOLUME 2 OF 25 VOLUMES

TRIAL COURT CAUSE NO. 800112

CHARLES MAMOU, JR. ) IN THE DISTRICT COURT

Appellant )

)

VS. ) HARRIS COUNTY, TEXAS

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THE STATE OF TEXAS )

Appellee ) 179TH JUDICIAL DISTRICT

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## PRETRIAL HEARING

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On the 7th day of September, 1999, the following proceedings came on to be heard in the above-entitled and numbered cause before the Honorable Bob Burdette, Judge Presiding, held in Houston, Harris County, Texas:

Proceedings reported by computer aided transcription/stenograph machine.

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3

1 (Defendant arraigned.)

2 THE COURT: To which indictment,

3 Mr. Mamou, how do you plead, guilty or not guilty?

4 THE DEFENDANT: Not guilty, Your Honor.

5 THE COURT: All right.

6 All right. I have some motions that I  
7 don't know if they've been ruled on or not.

8 MR. MCCLELLAN: No.

9 MR. HILL: Judge Wilkinson ruled on some.

10 THE COURT: Defendant's motion to voir

11 dire on the parole law, that motion is granted.

12 Defendant's motion to disclose existence of any testing,  
13 questioning, surveillance, or observations of the  
14 defendant by State's agents or representatives. And I  
15 don't know specifically -- well, the motion claims the  
16 request includes audio, electronic, or photographic, or  
17 other means of documenting any of the matters set forth  
18 in Paragraph Number 1, which states that counsel for the  
19 defendant believes that the defendant is subject to the  
20 testing, questioning, surveillance, or observations of  
21 the defendant by State's agents or representatives,  
22 including jail inmates.

23 MR. HILL: I want to know if there was any  
24 agents, obviously, Judge, that --

25 THE COURT: Have you seen this?

5

1 THE COURT: But, I mean, is that to the  
2 constabulary.

3 MR. MCCLELLAN: That's to the  
4 constabulary.

5 THE COURT: Request for conviction  
6 records. I assume that's been accommodated.

7 MR. MCCLELLAN: I'm providing them a  
8 written notice tomorrow of all the extraneouses.

9 THE COURT: Motion for the jury list. I  
10 assume y'all have been served, have you not? But that  
11 request is granted. Motion for the Court to direct the  
12 court reporter to take voir dire and bench conferences  
13 and final arguments. The reporter is agreeing. She  
14 will take them down. Demand for individual voir dire.  
15 The motion to present written questionnaire. I gather  
16 you all have agreed on whatever the questionnaire  
17 contains. Motion for discovery. Is there anything  
18 about that? I'll leave that to Judge Wilkinson.

19 MR. MCCLELLAN: I'm going through it line  
20 by line, and I'll get with Mr. Hill.

21 MR. HILL: The only one area that I  
22 brought to the Court's attention last week, and actually  
23 to Mr. McClellan, is with regard to firearms  
24 examination. We had asked that the Court order the  
25 Houston -- on our motion for discovery.

4

1 MR. MCCLELLAN: I have, Your Honor.

2 THE COURT: Is there any?

3 MR. MCCLELLAN: There is none.

4 (Off-the-record discussion.)

5 THE COURT: Mr. Hill, for your purposes,  
6 I'm not going to deny the motion, but I am going to ask  
7 the State if there is any that goes along while the  
8 trial is in progress, I'm not going to limit it just to  
9 the jury selection portion.

10 MR. MCCLELLAN: Right.

11 THE COURT: Please inform us, and we'll  
12 take it up from there.

13 It's granted, if and when it exists.

14 Motion for production of disclosure of  
15 informant. Is there such a creature.

16 MR. MCCLELLAN: No, sir.

17 THE COURT: Motion for hearing on the  
18 admissibility of evidence. I'll leave that to Judge  
19 Wilkinson. Motion for discovery of victim impact  
20 testimony, same. State reveal any agreements of the  
21 same. Motion to discover the portions of defendant's  
22 statement. I understand there is none, is there?

23 MR. MCCLELLAN: There is just an oral  
24 statement, and it's in the offense report, and they've  
25 had access to the offense report.

6

1 THE COURT: You brought it to my  
2 attention?

3 MR. HILL: No, I'm sorry. Judge Wilkinson  
4 was here the other day. Part of it has been what Mr.  
5 Wentz presented regarding the testing aspect. I had  
6 specifically requested in the motion to have the Houston  
7 Police Department provide photographs of their  
8 comparison, microscope, findings of the shell casings,  
9 or the marks on the shell casings that they're claiming  
10 show the shooting of Gibson and the shooting of  
11 Carmouche are connected. They're two different alleged  
12 crime scenes. And obviously, a shell casing or a live  
13 round, one matches supposedly the shell casings of the  
14 other. So, we're asking that the Houston Police  
15 Department provide an actual photograph that shows the  
16 comparison as opposed to just having the officer or the  
17 lab person testify that there is a match.

18 THE COURT: And you all had begun this  
19 with Judge Wilkinson?

20 MR. MCCLELLAN: Yes. And I believe Judge  
21 Wilkinson's position was he wasn't going to be directing  
22 them on how to do their job.

23 THE COURT: What I was going to say is no  
24 matter what Judge Wilkinson said, if you started with  
25 him, I was going to let you finish with him.

7

1 Are there any other motions that need to  
2 be tended to?

3 MR. HILL: If that's the whole stack right  
4 there, those are the ones we have for right now.

5 THE COURT: It's my understanding  
6 Mr. Mamou has been served with a copy of this week's  
7 list.

8 (Off-the-record discussion.)  
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8

1 THE STATE OF TEXAS )

2 COUNTY OF HARRIS )

3 I, Pamela Kay Knobloch, Official/Deputy  
4 Official Court Reporter in and for the 179th District  
5 Court of Harris County, State of Texas, do hereby certify  
6 that the above and foregoing contains a true and correct  
7 transcription of all portions of evidence and other  
8 proceedings requested in writing by counsel for the  
9 parties to be included in this volume of the Reporter's  
10 Record, in the above-styled and numbered cause, all of  
11 which occurred in open court or in chambers and were  
12 reported by me.

13 I further certify that this Reporter's Record  
14 of the proceedings truly and correctly reflects the  
15 exhibits, if any, admitted by the respective parties.

16 I further certify that the total cost for the  
17 preparation of this Reporter's Record is \$\_\_\_\_\_ and  
18 was paid by Harris County.

19 WITNESS MY OFFICIAL HAND this the \_\_\_\_ day of  
20 \_\_\_\_\_, 2000.

21  
22  
23  
24  
25  
Pamela Kay Knobloch, Texas CSR No. 1650  
Expiration date: 12/31/2000  
Official Court Reporter, 179th District Court  
Harris County, Texas  
301 San Jacinto  
Houston, Texas 77002  
713.755.6340

20 APPELLANT: CHARLES MAMOU, JR.  
21 CAUSE NO. 800112  
22  
23  
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## REPORTER'S RECORD

VOLUME 3 OF 25 VOLUMES

TRIAL COURT CAUSE NO. 800112

CHARLES MAMOU, JR. ) IN THE DISTRICT COURT

Appellant )

)

VS. ) HARRIS COUNTY, TEXAS

)

THE STATE OF TEXAS )

Appellee ) 179TH JUDICIAL DISTRICT

\*\*\*\*\*

## VOIR DIRE EXAMINATION

\*\*\*\*\*

On the 8th day of September, 1999, the following proceedings came on to be heard in the above-entitled and numbered cause before the Honorable Bob Burdette, Judge Presiding, held in Houston, Harris County, Texas:

Proceedings reported by computer aided transcription/stenograph machine.



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(Prospective jurors are seated.)

THE COURT: Good morning. The case that we've asked you to come over here so that we might visit with you about the prospect of serving as a juror is the case of the State of Texas versus Charles Mamou, Jr.

Mr. Mamou, stand up and face the jury panel, please, sir.

Mr. Mamou is represented by his attorneys, Mr. Wayne Hill and Kurt Wentz. Again, the State of Texas is represented by her Assistant District Attorneys, Mr. Lyn McClellan and Ms. Claire Connors.

Is there anybody here who feels that you know any of the people that I introduced to you? I take it by your silence, then, and the fact I see no indication to the contrary, that nobody knows any of the lawyers or the defendant involved in the case. And so from that point -- that standpoint, we're all going to start off on the same even footing.

In this case this defendant stands charged by indictment with the offense of capital murder. It's alleged to have occurred in Harris County, Texas, on or about the 7th day of December of 1998. Now I know that you have been kind enough yesterday to spend some time filling out these questionnaires that we have.

Before we go any further, I also know that

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most of you, if not all of you, the sum total of the information you get about what goes on downtown at the courthouse, about the criminal justice system, is what you see on television and what you know of Lance Ito and O.J. Simpson in that trial.

First off, folks, eliminate from that -- that thought from your mind. That's not going to happen here. This is the real world. It is not California. If you came here fearful that you might very well be locked up in some old dingy hotel room, kept away from your family, or friends, or job, your loved ones for weeks and months at a time, I'm going to tell you right now that is simply not going to happen to you. And the reason I can guarantee it's not going to happen to you is because if you guys got locked up in a hotel room, I'd have to get locked up in a hotel room. And I'm not about to do that, so just simply don't worry about it.

Second thing is I know that all of you are in a place that is unfamiliar to you. Being a juror in a case, whether it's a criminal case or a civil case, is a lot like being a pallbearer at a funeral. You're in a place you don't want to be. You're doing something you don't want to do. You're not so sure you know what's expected of you. Next and the last thing that's consistent is the only reason you're doing it in the

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first place is out of a sense of duty or sense of loyalty. Therefore, the four lawyers in the case and myself understand that we cannot get the best work product that you, a jury, has to offer if we waste your time, so we're not.

Now we're going to spend some time talking this morning about this case generally, the kinds of rules that can come into play during the trial of a case like this. Whether they do come into play or not, we simply don't know; because that will depend upon the evidence in the case. But we're going to spend some time talking about it. It is, by the clock on the wall as I see it, about eight minutes after 10:00. You folks will all be out of here by noon. When we have a case that is a case of this type -- that is to say, a capital murder case -- and in this case the State of Texas has made known to the defendant, made known to the Court, made known to the lawyers that in the event a jury in this case were to find this defendant guilty of the offense of capital murder, the State is going to seek the appropriate punishment in this case; that is, their claim that it will be the appropriate punishment, punishment of death.

Whether you, the jury, agree with what they're going to want or not, that's your call. And

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you'll make that decision on the basis of the evidence as presented to you. But any time the death penalty is a potential punishment in a case, the law requires that we do the jury selection process differently. And the difference is that we have to talk to each of you individually.

Now, obviously it would take thirty times longer to talk to each one of you one at a time than it would take to talk to all of you at the same time. So what we're going to do when we get through with our business this morning is that we are going to have broken you down into groups, who is going to come -- we're going to need you back here one day. We're going to talk to you either tomorrow or Friday. And I suspect we'll be able to get through with all of you by Friday.

At the conclusion of that conversation, either tomorrow or Friday, we may get you back; because what we're going to do is after the individual conversations have concluded, we're going to be creating a pool or a panel of roughly fifty people that will get back here. And out of that fifty people, we will extract the twelve and the alternates who will become the jury in the case. That will be done on the 30th of September.

Now if we talk to you tomorrow and we want

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1 you back here on the 30th, tomorrow being what, the 10th  
2 or the 9th? Whatever day tomorrow is, between then and  
3 the 30th of September, don't you alter your life one bit  
4 for us. You do the things that you would ordinarily do,  
5 and you do them in the way you would ordinarily do them.  
6 If you have a chance to leave town, take the chance and  
7 go. Don't change your business one bit for us, because  
8 that's self-defeating from our standpoint. But we are  
9 going to want you back here that one day, and on the  
10 30th everybody will leave here knowing whether they are  
11 or are not a juror in the case.

12 Now, that's basically the framework of  
13 the trial itself. The evidence in the case will begin  
14 on Monday, the 4th of October. The trial, as  
15 anticipated, will last perhaps a little bit longer than  
16 that one week; but it would not last as long as two  
17 weeks. So, that's how long the testimony is going to  
18 take in the case. The reason that we have -- that we  
19 can't be more precise than that is very simply this: We  
20 can pretty well figure out based upon the number of  
21 witnesses who are going to testify and what's  
22 anticipated they're going to say, how long it will take  
23 to present the evidence in the case. The variable in  
24 every case that is always different is that nobody has  
25 any idea how long a particular jury will take to

8

1 deliberate on a particular -- as to particular evidence  
2 that was presented to them.

3 You could have, conceivably in a case,  
4 three juries listening to exactly the same evidence in  
5 exactly the same courtroom at exactly the same time and  
6 go out in three different jury rooms to deliberate. And  
7 one jury might come back with a verdict in an hour. One  
8 might take a day. And one of them might be in there  
9 three days before they realize there is a doorknob on  
10 the bathroom door inside the jury room. There is just  
11 simply no telling. But that's the variable over which  
12 none of us have any control, and that's why we can't be  
13 more precise than a little bit longer than a week, but  
14 not as much as two.

15 Now having said that, let's talk about  
16 some things generally about a trial; this one, all the  
17 other ones, too. Let's talk first off about what your  
18 job is as a juror. And let's talk and compare it with  
19 what my job as a Judge is. As a juror, you are going to  
20 be the exclusive judges of the facts proved, of the  
21 credibility of the witnesses, and the weight that you  
22 want to give to the witnesses' testimony, meaning that  
23 as to one hypothetical witness, it may very well be  
24 after that witness has concluded testifying, that you  
25 might choose to believe one hundred percent of what that

9

1 witness says.

2 As to the second hypothetical witness,  
3 after that witness has concluded testifying, it may very  
4 well be that you choose to disbelieve one hundred  
5 percent of what that witness says. And as to  
6 hypothetical witness number three, after that witness  
7 has concluded testifying, it may very well be that you  
8 choose to disbelieve and -- or that you choose to  
9 believe part or some of that witness's testimony. That  
10 is entirely your option. You decide who you want to  
11 believe, and those you do decide you want to believe,  
12 how much weight you want to give to their testimony.  
13 And we say, how much weight do you want to give to a  
14 witness's testimony?

15 Because if -- obviously, if in some  
16 imaginary case there are fifty witnesses who testify,  
17 all fifty witnesses can't say things of exactly the same  
18 magnitude. Some things they say are going to be more  
19 important than what some things said by some other  
20 witness are going to be. So, you decide the  
21 believability and the importance; that is to say, the  
22 weight of their testimony. That is your job.

23 My job, on the other hand, has absolutely  
24 nothing to do with deciding who's believable, who's not  
25 believable as a witness. My job is to listen to every

10

1 single thing that the witnesses say. Whether I believe  
2 them or not makes absolutely no difference. So, as a  
3 result of all of the testimony that all of the witnesses  
4 have given to the jury, my job is to arm you in the  
5 Court's charge with all of the law that is raised by the  
6 testimony of those jurors. So of all the testimony  
7 that's raised, you will determine out of that testimony  
8 who is believable; and therefore, however, the Court's  
9 charge, which will contain all of the law in the case,  
10 you will extract that portion that applies to the  
11 believable testimony that you will determine. So you  
12 determine the believability of the witnesses, and I  
13 supply the law. And between the two things working  
14 together, we come up with what we think is the right  
15 result to reach based upon the information you have  
16 received in terms of the witnesses testimony and the law  
17 has been given to you in the Court's charge. That's the  
18 difference between a jury and a judge in a case.

19 Now, let's talk about the only rule that  
20 exists that has some interference with how you, as a  
21 juror, can determine the believability, the credibility  
22 of a witness. And I think that you'll find that this  
23 one rule makes a lot of sense, and that rule is really  
24 very simple. The Rule is this: Jurors can't choose to  
25 believe, jurors can't choose to disbelieve, what a

11

1 witness is going to say before the witness ever says it,  
2 meaning you got to give the witness a shot. From a  
3 priest to a derelict, you've got to give them a shot.

4

Now, once you hear what they got to say,  
5 you decide, do I believe them or don't I? And if I do  
6 believe them, how much weight do I want to give to their  
7 testimony? But we can't choose to automatically  
8 believe, or conversely, to automatically disbelieve what  
9 a witness says before the witness ever says it. A piece  
10 of that is that we can't decide that we're going to  
11 believe somebody just because of the job they got and  
12 not for any other reason, meaning simply this: Can you  
13 see what kind of a fix we would be in if our law said  
14 that everybody who ever testified down at the criminal  
15 courthouse who was either a junior high school principal  
16 or an accountant, those people are going to have to  
17 always be believed because they are junior high school  
18 principals and accountants. But if somebody ever  
19 testified down at the courthouse that was either a used  
20 car salesman or lawyer, those people can't ever be  
21 believed; because you see, they are used car salesmen  
22 and lawyers. The point being, you make your decision on  
23 who you want to believe on the basis of the quality and  
24 the content of what the witness says, not because they  
25 happen to possess a job for which you have a great deal

13

1 honorable kid you'd ever known, went on to become a  
2 police officer somewhere, just because that friend of  
3 yours, who you did know, who was so neat and nice and  
4 honest and dependable, trustworthy was that way doesn't  
5 mean that all of the people with whom he or she works is  
6 the same. Now maybe some of them are, but maybe some  
7 of them aren't.

8

The flip side of it is this: If five or  
9 six years ago you were driving along in traffic and you  
10 got pulled over by some nasty old cop who was rude and  
11 hassled you, gave you a ticket that you knew was  
12 perfectly and honestly unjustified, inaccurate, and you  
13 weren't guilty, just because that cop did that to you on  
14 that day does not mean that all the rest of them she  
15 works with is the same. Now maybe some of them are; but  
16 then again, maybe some of them aren't. The point being,  
17 please don't draw any conclusions about what qualities a  
18 witness possesses before the witness testifies. And  
19 once the witness has concluded, base your decision on  
20 whether you do choose or whether you choose not to  
21 believe the witness' testimony on the basis of the  
22 quality and content of what they have to tell you, not  
23 simply because of some job they happen to possess.  
24 Anybody here have any quarrel, any dispute, or any  
25 disagreement or discussion about that particular facet

12

1 of fondness for or one for which you have a substantial  
2 disdain.

3

I say that for this reason, among others:  
4 I would assume that because of the nature of this case,  
5 there is going to be testimony from law enforcement  
6 officers, whether they be police officers, constables,  
7 sheriffs, D.P.S. people, whatever. Don't know, but I'm  
8 assuming that there will be some testimony. Our law  
9 says that just because somebody is a law enforcement  
10 officer does not give them any more credibility before  
11 they ever testify. And the reason for it is perfectly  
12 simple. The reason that we don't give them, them being  
13 law enforcement personnel, any more credibility, or any  
14 less credibility for that matter, before they testify is  
15 because the one common feature that every law  
16 enforcement officer possesses is this: They are all  
17 extracts from the human race, and they don't get any  
18 more honest. They don't get any smarter. They don't  
19 get any more dishonest. And they don't get any dumber  
20 by putting on a uniform. They are whatever they are at  
21 the time they take the uniform.

22

So, what we're saying is this: If at some  
23 point in time in your past when you were growing up, for  
24 example, you might have known somebody who you just  
25 thought the world of, was the neatest nicest, most

14

1 of our law?

2

Now, if you came here today and you think  
3 if you were a juror in the case you're going to hear a  
4 whole bunch of out and out lying going on, I'm going to  
5 tell you it can happen; but I'm also going to tell you  
6 what can happen is this: Sometimes people say things or  
7 have recalled events that occurred in the past, and  
8 their recollection is a little bit different than what  
9 another witness' might be. And those two might be a  
10 little bit different than what a third person's might  
11 be. That is to say, there are some aspects of testimony  
12 that may be inconsistent.

13

Inconsistencies do not amount to  
14 intentional lies. I say that to you for this reason:  
15 As to you thirty folks, right now we could take you out  
16 there in that hallway, stage some ruckus for you to  
17 catch your eye, have it last fifteen seconds, terminate  
18 it, bring each of you in here individually one at a  
19 time, ask you what you saw; and you know, we'd get  
20 thirty different stories. Because some of you would be  
21 closer to it to see it than others. Some of you would  
22 be able to hear it better than you could see it. Some  
23 of you could see it and hear it real good, but your mind  
24 was wandering off on something else. Some others of you  
25 were so upset about being here in the first place, you



15

1 had no idea about what was going on, nor did you much  
2 care. So, the point being, just because the first  
3 person gets to talk about what they say they heard, what  
4 they observed, does not mean that the twenty-nine people  
5 who talked about it later were lying. It means they saw  
6 things differently than what the first person sees.

7

8 So while certainly there is out and out  
9 lying that goes on down here under oath from the witness  
10 stand, there is just no question about that, there are  
11 also many, many occasions or people who are accurately,  
12 to the best of their ability, giving an accounting of a  
13 circumstance that existed for a fleeting period of time  
14 if their life, perhaps as much as a year ago. So,  
15 please keep that in mind, too. To this point, does  
16 anybody have any questions for me about anything we  
17 talked about up till now?

17

18 I want to spend a couple of minutes  
19 talking to you about how this trial will unfold, and  
20 it's going to unfold just like every other criminal  
21 trial is. The first part of the trial the jury's only  
22 determination is going to be deciding whether the  
23 defendant is or is not guilty. If the defendant is  
24 found not guilty, the case is over with and that's the  
25 end of that. If, however, the defendant is found guilty  
of capital murder, we come back and have a second phase

16

1 of the trial.

2

3 The second phase of the trial will have  
4 nothing to do with deciding whether the defendant did  
5 the crime or not, because you would have already decided  
6 that at the first phase of the trial. The second phase  
7 of the trial exists simply for the purposes of giving  
8 you some more information about the defendant, himself,  
9 to better arm you with the ability to make decisions  
10 about how to answer two questions, two Special Issues  
11 that we'll talk about in a couple of minutes. And how  
12 you answer those questions will determine what  
13 punishment will be imposed.

13

14 So, because the focus -- because the  
15 purpose of the two phases of trial are different, the  
16 focus of the evidence is different. At the first phase  
17 of the trial, the focus of the evidence is going to be  
18 on the offense that was committed. The whos, the  
19 wheres, the hows, the whens, the whats, the whys, if  
20 there is or is not a prior relationship of the people  
21 involved in the crime. Everything there is to know  
22 about the crime you'll hear at the first phase of the  
23 trial.

23

24 If you find the defendant guilty of  
25 capital murder, at the second phase of the trial the  
focus of the evidence is going to shift. And the focus

17

1 of the evidence on the second phase of the trial is  
2 going to get off the crime itself and instead is going  
3 to be on the defendant. And at the second phase of a  
4 trial wherein a defendant has been found guilty of a  
5 capital murder, basically -- and this is an over  
6 generalization, but basically it's accurate -- you're  
7 entitled to hear about every single good thing some  
8 defendant has ever done before in his or her life, if  
9 there are any good things. You're also entitled to hear  
10 basically at the second phase of a capital murder trial  
11 about every single bad thing some defendant has ever  
12 done before, if there are any bad things. And you take  
13 all that good stuff and all that bad stuff here at the  
14 second phase of the trial, then pile that on  
15 information on the crime that was committed, what you  
16 heard at the first phase of the trial and throughout  
17 every single bit of it to answer the two questions we're  
18 going to talk about later.

19

20 But it's no more different than it is when  
21 we're raising kids. It's just no more different. If we  
22 ever told a child not to do something once and the child  
23 does it again, we're going to react one way. If we have  
24 told a child ten times in the last thirty minutes not to  
25 do something and they have done it for the tenth time,  
we're going to react a different way. And that's all

18

1 this is. See, while you're in a place different than  
2 what you're used to being, you're doing things that are  
3 out of your routine, things you don't ordinarily do, the  
4 truth of the matter is that is a perfectly simple  
5 operation. It's like going to a strange town and  
6 getting lost and asking directions.

7

8 First off, you want to choose somebody  
9 that you think knows, unless you're desperate; you need  
10 anything. Second thing is you decide whether you want  
11 to believe them or not. Third thing is, does it make  
12 any sense? It's the same way in here. All that you're  
13 going to have to do is you're going to have to listen.  
14 Now there ain't no substitute for listening. You're  
15 going to have to listen to what the witnesses say.  
16 You're going to have to analyze what they say. And then  
17 you're going to have to react. You're going to listen  
18 to what they say. You're going to decide whether you  
19 believe them or not. And you're going to come up with a  
20 verdict based upon your result. That's all this is  
21 about.

21

22 So, that's also the order of trial and the  
23 law. The law will be given to you in the Court's charge  
24 at the conclusion of the testimony at each phase of the  
25 trial. And the law that is the Court's charge is the  
law that applies to the trial of the case that's on

19

1 trial. For example -- because if you're in a capital  
2 murder case and you get the Court's charge that  
3 applies -- that sets out all the law that applies to the  
4 testimony that was presented, you take that charge with  
5 you back in the jury room and you say to yourselves,  
6 well, you know, I just read a dime novel about six  
7 months ago, and the butler does it. And we all know  
8 butlers don't do nothing except serve food and kill  
9 people in the books, so I believe there must have been a  
10 butler in this case. And the butler might have done it,  
11 and there is no evidence in the case about a butler.  
12 You've got to apply the testimony in this case. You  
13 can't go running off to what you saw on television. And  
14 I know every TV channel that you see, you've got to  
15 watch through seven minutes of dead bodies being dragged  
16 out of apartments, put in body bags, hauled off in cars,  
17 and you get to hear snippets about what happened. And  
18 they've got to do it real quick, because just in a short  
19 time, they're going to take a recess so they can go sell  
20 Tylenol. And that's what we're armed with when we come  
21 down to the courthouse, and that's simply not fair to  
22 you. It's not the real world. And everybody involved  
23 in a trial, especially, you the citizen, the jurors, are  
24 entitled to a better deal. So that's what we're going  
25 to spend a couple of minutes right now talking about is

21

1 may have nine buckets full of perfectly wonderful  
2 evidence that two months ago I committed that crime.  
3 That's a deal. But my arrest today can't possibly be  
4 any evidence that two months ago I committed that  
5 burglary. Anybody have any disagreement with that?  
6 And the same applies to being charged with  
7 committing a crime and being indicted for having  
8 committed a crime. That is an allegation, and each  
9 of those steps must occur before a case can be brought  
10 into a courtroom, jurors selected from the community, to  
11 listen to testimony, to see whether or not the  
12 accusation is supported by the testimony in the case.  
13 So, I'll tell you in the Court's charge  
14 and I tell you now, the fact that somebody was arrested,  
15 charged for, indicted for, having been indicted in the  
16 commission of a crime, none of those events are any  
17 evidence, nor can they be considered or taken by a Judge  
18 or a jury as any evidence that the defendant, in fact,  
19 did commit that crime. Is there anybody here who has  
20 any quarrel, who has any dispute, or who has any  
21 discussion about that aspect of our law?  
22 Okay. I'll bet from having watched  
23 television in the past -- and I spend a lot of time  
24 talking about Judge Judy, because that's one of the most  
25 amazing things I've ever seen in my whole life. And

20

1 that kind of stuff.

2 First of -- and these are general  
3 principles, general rules that apply to every single  
4 criminal case that exists in this country. First of  
5 all, we have talked about the fact that in this case,  
6 this defendant stands charged by indictment with the  
7 offense of capital murder. You'll be told in the  
8 Court's charge -- I'm going to tell you right now, the  
9 fact that somebody was arrested for having committed a  
10 crime, that singular event is no evidence they have  
11 committed that crime. The fact that somebody was  
12 charged with having committed a crime, the singular  
13 event of them having been charged is no evidence they  
14 committed the crime. The fact that somebody was  
15 indicted for having committed a crime, that singular  
16 event is no evidence that they committed that crime.

17 Now, how can that be? Well, let's just  
18 say that in Houston, Texas, two months ago there was a  
19 burglary of a building of a whole bunch of (inaudible)  
20 stuff was taped. And just right now through that door  
21 come twenty Houston Police Officers who arrest me today,  
22 right now, for having committed that burglary two months  
23 ago. Can you see that because I was arrested today  
24 can't possibly be any evidence that two months ago I  
25 committed that crime? Now those twenty police officers

22

1 you're going to have to notice, I ask you to notice,  
2 that Judge Judy don't deal with lawyers. Judge Judy  
3 only deals with individuals she can harass, and the same  
4 is true with Mills Lane. We're dealing with lawyers  
5 here, so it's different. Please, please excise that  
6 Judge Judy business from your thoughts.

7 But in the lawyer shows that have been on  
8 for years and years and years, I know in my heart that  
9 every single one of you have heard this phrase: The guy  
10 was found guilty beyond a shadow of a doubt. Everybody  
11 has heard that. Most of you possibly used it. The law  
12 doesn't require somebody to be proved guilty beyond a  
13 shadow of a doubt. Perry Mason, first television lawyer  
14 show I ever watched. I was a little kid. And it wasn't  
15 till about three or four years of watching that stuff it  
16 occurred to me Hamilton Burger -- you remember Hamilton.  
17 Hamilton was the District Attorney. Why would those  
18 people continue to reelect Hamilton as their District  
19 Attorney if he never won a case? So once you know that,  
20 you can pretty well figure out the fictitiousness of the  
21 whole thing. Perry Mason, always guilty beyond a shadow  
22 of a doubt. Got to prove somebody guilty beyond all  
23 doubt, beyond every doubt.

24 Well, the government, the prosecution,  
25 never has to prove somebody's guilt beyond a shadow of a

23

1 doubt. They don't have to prove it beyond every doubt,  
2 and they don't have to prove it beyond all doubt. That  
3 has never been the law in this country, is presently not  
4 the law in this country, and in all reasonable  
5 probability it will never be the law in this country.  
6 The law, however, does require that the prosecution  
7 prove a person's guilt beyond a reasonable doubt. And  
8 in the Court's charge I will give you the definition  
9 that we are required in our state to give you as to what  
10 the term reasonable doubt means.

11

I'm now going to give you a portion of  
12 that definition. It is not -- because I want you to  
13 know about it before the trial ever begins. It is not  
14 required that the prosecution prove guilt beyond all  
15 possible doubt. It is required that the prosecution's  
16 proof excludes all reasonable doubt concerning the  
17 defendant's guilt. A reasonable doubt is a doubt based  
18 on reason and common sense after a careful and impartial  
19 consideration of all of the evidence in the case. It is  
20 the kind of doubt that would make a reasonable person  
21 hesitate to act in the most important of his own  
22 affairs. Proof beyond a reasonable doubt, therefore,  
23 must be proof of such a convincing character that you  
24 would be willing to rely and act upon it without  
25 hesitation in the most important of your own affairs.

24

1 That, ladies and gentlemen, is the  
2 standard of proof that the State must present to you  
3 through their witnesses to encourage you to believe the  
4 accuracy of the allegation against the defendant. Now  
5 the point of it, and the significant point, is this: It  
6 is always, always, always the State's job to prove that  
7 a person is guilty. It is never ever, ever a  
8 defendant's job to prove that he is or she is not  
9 guilty.

10

Now you might say to yourselves, well, I  
11 don't agree with that. I think a defendant ought to  
12 have to prove that he or she didn't commit the crime.  
13 And I suggest to you that probably if you thought about  
14 it for a second in practical terms, you wouldn't have  
15 that conclusion. For example, today is the 9th -- 8th  
16 of September. Whatever it is, that's what today is, 8th  
17 of September of 1999.

18

Let's go back five years ago today,  
19 8th of September, 1994. And I go back five years  
20 just simply to pick a day that has existed in our lives  
21 before where we may not have a recollection of what we  
22 did that day. It was a day that all we know is we have  
23 successfully been fortunate enough to live through. If,  
24 however, the 8th of September is a day that does have  
25 some significance to you, an anniversary, a birthday, a

25

1 significant event that does cause you to -- then pick  
2 another day. Pick October, August, April, some other  
3 day.

4

But at any rate, let's say when we get  
5 through in our business in a little bit, you're walking  
6 out to the elevator, waiting outside the courtroom is a  
7 nice deputy sheriff, walks up to you and says, Are you  
8 Mr. A, or Are you Miss B? Well, yes, I am. Well, I  
9 have something for you. Because, you see, while you  
10 were in that courtroom making yourself available for  
11 jury duty, a Grand Jury in Harris County, Texas, in one  
12 of their secret sessions -- and the law requires they be  
13 secret -- has just returned an indictment against you  
14 today, charging you with having, on the 8th of September  
15 of 1994, committed the offense of sexual assault of a  
16 child. Have a nice day.

17

What is going to be the second thing that  
18 you're going to do? The first thing you're going to do  
19 is pass out. The second thing you're going to do is  
20 you're going to say, I didn't do it. And, of course,  
21 you didn't. Now, how do you prove it? Well, you might  
22 say to yourselves, if the 8th of September of '94 was a  
23 workday, I know that I ordinarily get to to work at 8:15  
24 every morning, and I habitually get home at 6:15 or 6:30  
25 in the evening.

26

1 Let's just say the 8th of October or 8th  
2 of September was a workday, and I don't know whether it  
3 was or wasn't. That means that you are armed, if it  
4 was, with information to prove when you go to work and  
5 when you get home. And in your wildest dreams, you  
6 cannot believe that proves you did not commit that  
7 crime. The point being, it's not your job to prove that  
8 you didn't do it. It's the State's job to prove that  
9 you did do it.

10

It's just like so many -- not a system,  
11 but a thread of justice that has been in all of our  
12 bodies ever since we first started interacting with  
13 kids, whether it was going to school, whether it was  
14 neighbor kids on the block, whoever it might have been.  
15 And that was this: If anybody in our peer group ever  
16 blamed us for having done something wrong to the other  
17 members in our peer group, it was the person's job who  
18 was doing the blame to go prove that we did do something  
19 wrong. And it is absolutely no different here in the  
20 courtroom. The people doing the blaming are the people  
21 who have to do the proving. The State's doing the  
22 blaming. The State's got to do the proving. How much  
23 proving the State's got to do, I don't know; but it's  
24 got to be at least that satisfies you beyond a  
25 reasonable doubt that the allegation is accurate.



27

1 So unless or until the State's evidence  
2 does prove beyond a reasonable doubt the defendant's  
3 guilt, the defendant is not guilty. The defendant is  
4 not guilty. Right now the defendant stays innocent.  
5 Stays innocent -- presumption of innocence -- unless or  
6 until the time comes when, based upon the evidence  
7 presented by the State, that presumption of innocence,  
8 that presumption of being not guilty, is erased by the  
9 quality and the contents of the evidence; and the jury,  
10 instead, finds the defendant to be guilty based on that  
11 evidence.

12 Now you say to yourselves, for example,  
13 well, what if the only information -- I'm jumping a  
14 little bit of ahead of myself, because I don't want to  
15 run the risk of forgetting this later on. What if the  
16 State is the only one that presents evidence and the  
17 other side doesn't? Doesn't make any difference;  
18 because, you see, you might not believe the State's  
19 evidence. Just because they're the only people that are  
20 talking doesn't make them accurate. Just because people  
21 get to talk last don't make them right. The point  
22 being, you analyze, think about, you evaluate every  
23 witness' testimony based upon the quality of the  
24 contents of it and how they hit you, they, as a witness,  
25 how they come across to you. So just because the State

28

1 is the only side that presents testimony doesn't mean  
2 that testimony is believable.

3 It could be at the conclusion that you  
4 determined it to be it. Could also be at the conclusion  
5 you determine it's not. So keep your mind open the  
6 whole way through. Now, any questions to this one? I'm  
7 sure every single one of you live your lives in such a  
8 way that when it comes down to making an important  
9 decision in your life, whatever that decision might be,  
10 that you want to possess, to gather all of the  
11 information you can possibly gather for the purposes of  
12 helping you make a better informed and a more  
13 intelligent decision.

14 You go shopping for cars. You get all the  
15 information. You go shopping for houses. You get all  
16 the information. You go shopping for spouses -- well,  
17 that might be different. Sometimes the information is  
18 not accurate, because there ain't no warranties about  
19 that stuff. But the point being, you want to gather all  
20 the information you can; because it just broadens your  
21 comfort zone. It makes you feel a whole lot better  
22 about the decision you do make.

23 So, we bring you down here to the  
24 courthouse, ask you to take some time, do your duty,  
25 serve as a juror in a case. And you come down here, and

29

1 I'm going to tell you right now, it may very well be  
2 that we don't tell you, we don't give you all the  
3 information you might like to have. Now see, that just  
4 rips it sometimes; but I want to spend some time talking  
5 about that, because there is a very legitimate and  
6 actually a logical reason as to why that happens.

7 And I use this example till even I'm sick  
8 of it, but it's true. Years and years and years ago,  
9 when I was a kid -- years and years ago is when I had  
10 kids, I should say. One evening I was in a room.  
11 Six-year-old daughter comes in, takes a big old deep  
12 breath, puts her hands on her hips, got just as dramatic  
13 as she could possibly get and said, Daddy, do you know  
14 what your other daughter did? And I said, No, I don't.  
15 She said, You know the cookies that mom had been  
16 spending this afternoon making? I said, I do. Did you  
17 know Amanda ate mine? No, I didn't. You've been  
18 through something like that, every single one of you  
19 have. What's the first thing we do? We fall for it  
20 every time. We get the other kid in. Why? We want to  
21 play the other kid off on the one that's telling us a  
22 story. Why? Because we're not so sure we believe the  
23 first kid. Why? Well, they might have been fighting  
24 that day. Who knows? That's just what we do. We all  
25 want to get all that information.

30

1 You're at work. Your job for years at  
2 work has been to manufacture a widget, seventy-five  
3 cents a unit. Out of the blue, somebody walks into your  
4 office one day and says, Hey, I know how we can make  
5 this widget at sixty-five cents a unit, a dime cheaper.  
6 It's going to be the same quality. It's just going to  
7 save us money. What's the first thing you do? You get  
8 everybody up and down the marketing chain, the  
9 manufacturing chain. You get them together in a room,  
10 and y'all talk about it. Can we really do it for  
11 sixty-five cents? You want to get all of the  
12 information you can get. You do the same thing when  
13 you're on the committee at the church that's going to  
14 hire the preacher that's going to replace the one that's  
15 just recently retired. You want to talk to all of them.

16 Same thing when you elect next year's PTA  
17 President at school. You want to hear from everybody,  
18 because it broadens your comfort zone. You assemble all  
19 the information you can get to help you make a better  
20 decision. Down here we say that may not happen. And  
21 let's talk about why it's not going to happen -- why it  
22 may not -- not why it's not, but why it may not.  
23 Because we have talked about the fact that it's the  
24 State's job to prove a defendant committed a crime.  
25 It's not the defendant's job to prove he did not commit

31

1 the crime.

32

2 So after the conclusion of the evidence in  
3 a case, when the State rests their case, when they have  
4 presented whatever evidence they're going to present,  
5 one of three things can happen. It may very well be  
6 that the defense chooses to rest immediately. That is  
7 to say, presented no evidence at all immediately upon  
8 the conclusion of the State's evidence.

33

9 Second thing might be the defense intends  
10 to present evidence and does present evidence that does  
11 not include the defendant's testimony. That is to say,  
12 other witnesses, but not the defendant.

34

13 Third possibility is other witnesses and  
14 the defendant. In the event the defense presents no  
15 witnesses at all at the conclusion of the State's  
16 case -- as I said earlier, they don't have to. And you  
17 might say to yourselves, I sure would like to hear the  
18 defendant's side of the story. Nothing wrong with  
19 thinking that way. But can you see it's the State's job  
20 to prove he did it? It's not his job to prove that he  
21 didn't. And just because you only heard one side of the  
22 story does not mean that you have to believe that side.

35

23 It's just like when you go shopping for a  
24 car. If you see one salesman and it's the only person  
25 you talk to and you don't talk to anybody else, that

36

1 doesn't mean you have to believe the one you talked to.  
2 Doesn't mean he has to be accurate. Doesn't mean he has  
3 to be honest. It simply means that's all the  
4 information you got. You decide for yourself whether  
5 you believe it, whether you don't believe it. But  
6 sometimes it's frustrating, I know, for jurors at the  
7 conclusion of the evidence in the case to go back to a  
8 jury room in a case and you say to yourselves, boy, I  
9 sure wish I had heard what the defendant had to say. It  
10 would have made my job a whole lot easier. And that may  
11 be absolutely accurate. It may very well be at the  
12 conclusion of the testimony in a case, if you don't hear  
13 from the defense you might say to yourselves, boy, I  
14 sure would have liked to heard what was on their side of  
15 the street, like to have heard something else. Nothing  
16 in the world wrong with thinking that way. The problem,  
17 however, is that it's not the defendant's job to prove  
18 anything to you. It's the State's job. So, you can't  
19 hold it against a defendant for having not testified or  
20 a defendant for having presented no testimony.

37

21 Your job is to make your decision on the  
22 basis of the information you're given. The jurors' very  
23 first function will be that you will take an oath, and  
24 that oath will be that the verdict you return in the  
25 case, whatever that verdict winds up being, will be

38

1 based exclusively upon the testimony that you hear from  
2 the witnesses under oath, as well as any physical items  
3 of evidence that might be admitted for your benefit, as  
4 well as the law that's contained in the Court's charge.  
5 So, that's all. You can't go out and find an imaginary  
6 butler and say, they're possibly guilty of the offense,  
7 because that's not the evidence in the case from our  
8 example earlier. You have to base your decision on  
9 information you do have. You cannot base your decision  
10 on information that you do not have, nor speculate as to  
11 why you don't have it.

39

12 So, I'll tell you in the Court's charge  
13 and I'll tell you now, that if the defendant in the case  
14 does not testify, that is no circumstance that any Judge  
15 or any jury could use as an inference, as a suggestion  
16 that the defendant is, in fact, guilty of the offense.  
17 Because otherwise, he or she would have testified;  
18 because it's not his or her job to disprove their guilt.  
19 It's the State's job to prove their guilt.

40

20 Now having said that, having also talked  
21 about you've got to make your decision on the basis of  
22 the information you were given, I also can tell you that  
23 sometimes you go out and you say to yourselves, I sure  
24 wish Lawyer A had asked a witness so-and-so. I wish  
25 Lawyer B had presented us with testimony by such and

41

1 such. And they may be perfectly wonderful thoughts, and  
2 maybe that should have occurred. Maybe it would have  
3 been simply -- but can you also see that perhaps that  
4 testimony never existed in the first place.

42

5 So it's just like when an example I've  
6 also used. When I was a teenager growing up, there was  
7 about a year there where there were five boys in the  
8 family, four brothers and myself; and we were all  
9 teenagers at the same time, and we ate like horses. And  
10 at 6:00 o'clock every evening when mom came into the  
11 dinner table, she would sit down the meat platter. And  
12 the fastest fork got the best piece of meat. And there  
13 were seven pieces of meat. One for the boys, one for  
14 mom, and one for dad. And when all seven pieces of meat  
15 were gone from that platter, nobody ever thought mom was  
16 going to take that meat platter up to that kitchen and  
17 load it back up again.

43

18 I'm just saying, here in the courtroom  
19 when all the evidence is through, it's all you're going  
20 to get. And if that evidence is enough that creates a  
21 broad enough comfort zone to make you believe based upon  
22 that evidence beyond a reasonable doubt the defendant's  
23 guilty, then your obligation is to find him guilty. And  
24 if that evidence and that information is not enough that  
25 makes your comfort zone broad enough to make you believe

35

1 that beyond a reasonable doubt the defendant is guilty,  
2 your job is to find him not guilty. But your job is to  
3 make the decision on the basis of the information you're  
4 presented with and your evaluation of that testimony.

5 And the reason that the other side doesn't  
6 have to testify -- and we talked about the little kid  
7 coming in, and we get the other kid in to hear the other  
8 side of the story, and all the competing thoughts and  
9 processes, and the widget business, and the preachers  
10 and all this stuff is simply this: That first kid who  
11 told me that her little sister had eaten all the  
12 cookies, do you know that that little sister was not  
13 going to be liable to the death sentence? The first  
14 child was wrong, so the first child didn't have to prove  
15 that to me beyond a reasonable doubt. In the courtroom  
16 the proof has to be beyond a reasonable doubt, because  
17 somebody could die.

18 The widget business, the guy who claims we  
19 can do it for sixty-five cents instead of seventy-five  
20 cents, doesn't have to prove beyond a reasonable doubt;  
21 because if he's wrong, nobody's going to die. The  
22 preacher who says, I'm going to increase the size of  
23 your congregation by thirty-three percent over the next  
24 year doesn't have to be accurate, because he's not going  
25 to die if he's wrong. In the courtroom, somebody might

36

1 die, and that's why the State has to prove it beyond a  
2 reasonable doubt. And that's why you don't have to have  
3 competing sides to dispute the first side, because it's  
4 the quality of the evidence. So first, it's not the  
5 number of the witnesses, not anything else. It's the  
6 quality of the believable evidence. So you go back to  
7 the premise, this part of it. Is there anybody here  
8 who -- and the instruction in the Court's charge will be  
9 if the defendant in this case does not testify, that is  
10 no suggestion, that is no inference, that they're hiding  
11 something. And you cannot believe that a defendant is  
12 guilty simply because a defendant did not do something  
13 that the Constitution doesn't require him to do, and  
14 that's testify. Is there anybody here who has any  
15 dispute, any quarrel, any disagreement, or any  
16 conversation about -- any discussion about that facet of  
17 our law?

18 Okay. We talked about the fact -- and I  
19 know the questionnaire, the cover letter in the  
20 questionnaire touched on this, also. We talked about  
21 the fact that the death penalty is a possible punishment  
22 in this case. I'm not going to spend a great deal of  
23 time on this, but I do want you to know what the system  
24 is, what the system calls for, and how a result can  
25 occur.

37

1 If a defendant is found guilty of capital  
2 murder at the conclusion, we talked about coming back  
3 and having a second phase of the trial. In the second  
4 phase of the trial, testimony is going to be presented  
5 to you about aspects of the defendant's background and  
6 character, perhaps their responsibility, and in terms of  
7 the crime itself, if there are multiple people involved.  
8 But at the conclusion of the evidence at the second  
9 phase of the trial, in the Court's charge you'll be  
10 given the law that is raised by the testimony as it  
11 applies to that phase of the trial. And your verdict at  
12 that time will be based upon how you answer two Special  
13 Issues, how you answer two questions.

14 These questions are up here on the board.  
15 I don't know if you can see them. If you can, that's a  
16 deal. If you can't, don't worry about them; because I'm  
17 not going to spend any real great time talking to you  
18 about them, except I want you to know they exist. The  
19 first question you'll be asked is this: Do you find  
20 from the evidence beyond a reasonable doubt that there  
21 is a possibility that the defendant would commit  
22 criminal acts of violence that would constitute a  
23 continuing threat to society, based upon the testimony  
24 in the case?

25 Now no matter who the defendant is, no

38

1 matter who the victim was, no matter what the testimony  
2 was, and no matter what the case was, there are only two  
3 possible answers as to that question, yes or no. The  
4 jury will answer the question whichever way the evidence  
5 in the case directs them in their judgment. Question  
6 Number Two will ask the jury: Do you find that, taking  
7 into consideration all the evidence, including the  
8 circumstances of the offense committed -- that's going  
9 to be what you heard at the first phase of the trial --  
10 also including the defendant's character and background  
11 and the personal moral culpability or blameability and  
12 the responsibility of the defendant -- that's going to  
13 be what you heard at the second part of the trial.

14 So the first half of the second question  
15 just instructs you to go back over all the evidence in  
16 the case for the purpose of asking you this question:  
17 Is there a sufficient mitigating circumstance or  
18 circumstances that warrant a sentence of life  
19 imprisonment rather than a death sentence be imposed?  
20 Again, no matter who the defendant, no matter who the  
21 victim, no matter what the evidence, no matter what the  
22 case, there are only two possible answers to that  
23 question, either yes or no. And the jury will answer  
24 that question whatever way that the evidence dictates.

25 If the jury should answer yes to Question



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1 Number One and if the jury should answer no to Question  
2 Number Two, the law says that I have no choice, I have  
3 no discretion, I have no option. I must sentence the  
4 defendant to death. And that is exactly what I'll do.

5 On the other hand, if the jury should  
6 answer these questions in any way other than yes and no,  
7 in that order, the law once again says I have no choice,  
8 I have no option, I have no discretion. I must sentence  
9 the defendant to life. And that's exactly what I'll do.  
10 So -- and these questions will always be asked in that  
11 order, the Number One that I told you about, Question  
12 Two I told you about. Always going to be in that order.

13 So from that, you can see at the outset  
14 that at the conclusion of some capital murder cases, a  
15 result might be a death sentence imposed as a result.  
16 In another case, might be a life sentence imposed.  
17 These questions never change. The order in which  
18 they're given never changes. The one thing that is  
19 always different is the defendant on trial, the  
20 background, the character of the defendant, the victim  
21 involved, the facts of the case, the testimony of the  
22 witnesses. Those are the variables that exist.

23 And the jury -- as we talked earlier, two  
24 juries could hear the same things, drawing entirely  
25 different conclusions based upon how you evaluate the

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1 not going to go into detail about the questions today.  
2 I will when we talk about this on an individual basis,  
3 but I did want you to know the format, so to speak.

4 Now the death penalty is a possible  
5 punishment. Whether it's the appropriate punishment,  
6 nobody can say until after the evidence is offered. But  
7 since the death penalty is a possible punishment, I'm  
8 going to ask each of you a question, and again, in a  
9 group. I'm going to ask you one time. Before I ask you  
10 the question, we're going to do like we used to do in  
11 the Army. I'm going to tell you what the question is  
12 going to be that I'm going to ask you. Then I'm going  
13 to ask you the question. Then I'm going to tell you  
14 what it was I just asked you. So, please don't answer  
15 my question first. The question I'm going to ask you  
16 when I get to it is this: Because the death penalty is  
17 a possible punishment and because both sides have the  
18 right to have jurors who will freely exercise their  
19 ability to answer these questions based upon the  
20 evidence in the case, irrespective of what punishment it  
21 may cause, but because both sides have the right to have  
22 jurors who can consider the whole range of punishment.  
23 And since the death penalty is a possible punishment, is  
24 there anybody here who, if after having heard all of the  
25 evidence in the case, and if based upon that evidence

40

1 testimony. So can you see that while one of the  
2 standardizations that exist in a capital murder case is  
3 these questions, the thing, the variable always exists;  
4 that is, the uniqueness of the individual case both in  
5 terms of the offense, the background of the defendant,  
6 and the jury that was involved, which means at the  
7 conclusion of the evidence in one case, where a life  
8 sentence was imposed, that may be the absolute most  
9 appropriate decision in the world to make based upon  
10 that particular case.

11 In another case a person found guilty of  
12 capital murder, death sentence is imposed. The  
13 questions are answered in such a way that the death  
14 sentence is imposed. Again, that might be the most  
15 appropriate decision to make based upon the facts and  
16 the evidence in that case. But the point being, every  
17 case has the uniqueness that causes you to have to judge  
18 a case on the basis of its merits at the time the  
19 testimony is presented to you and not compared to some  
20 other case that's not involved in the trial at all or  
21 some other circumstance.

22 So, having said that to you, that is the  
23 system. And that's how it is determined whether a life  
24 sentence is imposed or a death sentence is imposed if a  
25 defendant is found guilty of capital murder. Again, I'm

42

1 that you believe that the death penalty was an  
2 appropriate punishment to be considered -- is there  
3 anybody here who, because of some religious, some  
4 philosophical, some conscientious, or some moral reason  
5 would refuse to consider it as a possible punishment,  
6 even though the evidence dictated to you intellectually  
7 that you should, you would refuse to consider it no  
8 matter what the evidence?

9 Now, that's the question I'm going to ask  
10 you. I'm going to clean it up and explain the question  
11 a little more thoroughly. Is there anybody here who, if  
12 you were a juror and if you got down to the conclusion  
13 of the evidence in the case -- is there anybody here who  
14 would refuse to consider answering these two questions  
15 in such way that the death penalty would be imposed,  
16 simply and only because of some philosophical, some  
17 religious, some moral or conscientious internal thought  
18 that you had that would cause you to override the  
19 evidence in the case and follow your moral -- moral  
20 thought, I should say, or conscientious objection to  
21 answer these questions?

22 Now, that's the question. I'm not talking  
23 about how you'll vote in this case. I'm not talking  
24 about whether you would or not like the death penalty or  
25 whether this would be difficult or not difficult.

43

1 That's not the point. The point is, is there ever,  
 2 ever, ever, ever going to be in your mind, no matter  
 3 what it might be, no matter how powerful, no matter how  
 4 gruesome, no matter how awful -- is there ever, ever,  
 5 ever going to be a time when, no matter what the  
 6 evidence was, you would refuse to follow that evidence  
 7 and answer these questions in such a way that the death  
 8 penalty was imposed because you had some religious, some  
 9 moral, some conscientious, or some philosophical  
 10 objection to the consideration of death as a possible  
 11 punishment in a case?

12 Is there anybody in the first six? No one  
 13 in the first six. Anybody on the second row? Nobody on  
 14 the second row. Is there anybody on the first row on  
 15 the right?

16 Yes, ma'am, and your number, please?

17 VENIREPERSON: 16.

18 THE COURT: 16. Thank you. Anybody on  
 19 the third row on the left? Anybody on the second row on  
 20 the right?

21 Your number, please, sir?

22 VENIREPERSON: 26.

23 THE COURT: All right. Thank you.

24 Okay. We had talked earlier about how  
 25 we're going to go about this process. We're going to

45

1 you're here today laboring under is the fact when you  
 2 backed out of the driveway this morning, instead of  
 3 taking a right to go to work, which is what you would  
 4 have done, you had to take a left to come downtown.  
 5 That starts everything off wrong, and nothing ever gets  
 6 rehabilitated as a result of that. I recognize that.  
 7 That's why we're not going to waste your time.

8 But I want to get past inconveniences, and  
 9 I want to talk about either Thursday or Friday, tomorrow  
 10 or Friday. I want to talk about the 30th of  
 11 September -- I'm sorry -- 29th of September. And then I  
 12 want to talk about not more than the weeks of October  
 13 3 -- October 4 and 11. Excuse me. Now, is there  
 14 anybody here for whom those dates are an impossibility?  
 15 And I'm not talking inconveniences. Anybody here for  
 16 whom some circumstance exists in your life that would  
 17 prevent you from being with us on those occasions?  
 18 First six over here, on the first left row? Anybody  
 19 there? Nobody? Second row? Anybody there? Nobody  
 20 there? The third row, on the first -- on the right?

21 Yes, ma'am, your number?

22 VENIREPERSON: 15.

23 THE COURT: 15. And what is your  
 24 situation, please?

25 VENIREPERSON: School.

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1 get you back either tomorrow or Friday. If you're not  
 2 due back until Friday, you do tomorrow whatever it is  
 3 you ordinarily do. Don't worry about us. If you're due  
 4 here Friday, obviously we want you here Friday. So  
 5 we're going to have you here either tomorrow or Friday.

6 We're also going to have to say that there  
 7 is a chance that we will want you back on Wednesday, the  
 8 30th of September, which is what? Three weeks from  
 9 today? Okay. Three weeks from today. And what we're  
 10 going to be doing in the three-week period is we'll have  
 11 other people just like you in here and we'll be creating  
 12 a pool and wind up with about fifty. And we'll come  
 13 back on that day, the 29th of September, and we'll --  
 14 it's not going to last any longer than today will  
 15 probably. And everybody will leave here on that day,  
 16 Wednesday, the 29th, knowing whether they are or are not  
 17 a juror in the case.

18 If you're not a juror in the case, you  
 19 won't care about when the case starts. But if you are a  
 20 juror in the case, the case will start the following  
 21 Monday, being October the 4th, and lasting no longer --  
 22 and probably not this long -- two working weeks. Now I  
 23 know -- we all know that everybody who is here today is  
 24 here today laboring, to some degree or another, under  
 25 some inconvenience. If the only inconvenience that

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1 THE COURT: And where do you go to school?

2 VENIREPERSON: Northwest College.

3 THE COURT: Northwest. Is that a junior  
 4 college?

5 VENIREPERSON: Yes, sir.

6 THE COURT: The third row, the six on the  
 7 left? Anybody there? Second row? Second row of six on  
 8 the right? Anybody there?

9 Yes, sir?

10 VENIREPERSON: 29.

11 THE COURT: Uh-huh?

12 VENIREPERSON: I'm going to be relocating  
 13 to Minnesota.

14 THE COURT: Just in time for winter.

15 VENIREPERSON: Well, I start next Monday.

16 THE COURT: That will get you there in  
 17 time for winter.

18 Okay. Mr. McClellan and Mr. Hill, is  
 19 there anything that I have omitted discussing with the  
 20 jury before we get together? And I have not forgotten  
 21 that one situation.

22 MR. HILL: I don't believe so.

23 MR. MCCLELLAN: No.

24 THE COURT: Ladies and gentlemen, what's  
 25 going to happen next, the lawyers and I are going to get

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1 up here and sort information out both from your  
2 questionnaires and your conversation today. And we're  
3 going to ask some of you to come back. I don't want you  
4 to think that you're supposed to sit here quiet, not say  
5 anything at all. That's just unnatural and not the  
6 case. But keep in mind, also, that we're going to have  
7 to be up here. We're going to have to talk loud enough  
8 that we can hear each other, but quietly enough so you  
9 can't hear us. So if you guys get loud, that's okay.

10 I don't know if you ever had happen in a  
11 big old room what I've had happen. You're going to tell  
12 your friend the biggest, juiciest, best piece of gossip  
13 you possess. And the room is noisy, and you set it up.  
14 And just before you deliver the punch line, everybody  
15 goes quiet; and everybody hears what you got to say. I  
16 guess all I'm telling you is if you get loud, please  
17 stay loud. And in about ten minutes, we'll be back with  
18 you. Thank you very much.

19 But before we go any further with that,  
20 I'm going to ask Miss Scott, would you come up here,  
21 please?

22 (At the bench:)

23 THE COURT: Miss Scott, how are you? I  
24 don't want you to feel singled out. There is a question  
25 I want to ask about. You said in your questionnaire

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1 determine any factual dispute? That is to say, the  
2 testimony in the case, as you hear it from the courtroom  
3 and the witnesses under oath?

4 VENIREPERSON: No.

5 THE COURT: Mr. McClellan, any questions?

6 MR. MCCLELLAN: No.

7 THE COURT: Mr. Hill?

8 MR. HILL: No, sir.

9 THE COURT: Miss Turner, would you come  
10 up, please, ma'am, Number 50?

11 (At the bench:)

12 THE COURT: Miss Turner, you had said that  
13 you were going to school, Northwest Junior College.  
14 When do you go?

15 VENIREPERSON: I go in the evenings, but I  
16 have a final exam to make up on Thursday.

17 THE COURT: Thursday of this week?

18 VENIREPERSON: Uh-huh.

19 THE COURT: If we schedule you Friday --

20 VENIREPERSON: That would be fine.

21 THE COURT: -- would that fix your  
22 problem?

23 VENIREPERSON: Yes, sir.

24 THE COURT: The other times we've talked  
25 about, any problems there?

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1 that had you had -- Question Number 2 on Page 4 asks, Do  
2 you have any knowledge of this case or a capital murder  
3 case involving Charles Mamou, Jr., Terrence Gibson, and  
4 Mary Carmouche? And you checked "yes." Your answer was  
5 that you got that from the newspapers and the TV.

6 Now the information that you possess about  
7 this case, has it caused you to form an opinion before  
8 the trial ever begins about the defendant's guilt in  
9 this case?

10 VENIREPERSON: No.

11 THE COURT: Has the information that you  
12 possess, whatever it might be, caused you in any way to  
13 form an opinion, if the defendant's guilty, what  
14 punishment he should receive before the case ever  
15 begins?

16 VENIREPERSON: No.

17 THE COURT: Has information that you're  
18 aware of -- have you heard about the case from anywhere  
19 other than from the television, newspapers?

20 VENIREPERSON: No.

21 THE COURT: No friends or acquaintances  
22 that y'all talked about the case?

23 VENIREPERSON: No.

24 THE COURT: Would the information that you  
25 possess in any way interfere with your ability to

50

1 VENIREPERSON: Huh-uh.

2 THE COURT: Thank you very much. You may  
3 have a seat.

4 (Defendant joins bench conference.)

5 THE COURT: Okay. If I'm understanding  
6 correctly, for various reasons -- if I'm understanding  
7 correctly, there is an agreement by and between the  
8 parties that the following venirepersons, for various  
9 reasons, may be excused from this panel of thirty, those  
10 being: Venirepersons Number 1, 3, 5, 7, 11, 13, 14, 16,  
11 17, 20, 25, 26, and 29, each may be excused.

12 Mr. McClellan, is that your agreement,  
13 sir?

14 MR. MCCLELLAN: Yes, Your Honor.

15 THE COURT: Miss Connors, yours ma'am?

16 MS. CONNORS: Yes, sir.

17 THE COURT: Mr. Hill, yours?

18 MR. HILL: Yes, sir.

19 THE COURT: Mr. Wentz?

20 MR. WENTZ: Yes.

21 THE COURT: Yours, Mr. Mamou?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: Do you request each of those  
24 be excused?

25 THE DEFENDANT: Yes, sir.

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1 THE COURT: Very well. I'll honor that  
2 request, and they're excused.

3 Okay, so that's seventeen.

4 (Off-the-record discussion.)

5 THE COURT: Anything else we want to talk  
6 about?

7 (Continuing in jury's hearing:)

8 THE COURT: Ladies and gentlemen, we've  
9 come up with, out of the thirty of you, we're going to  
10 ask for seventeen of you to come back. We're going to  
11 ask for ten of you to come back tomorrow. We're going  
12 to ask seven of you to come back Friday. Each of those  
13 days we're going to want you up here outside this door  
14 before 8:30 a.m.

15 Now let's talk about what we're doing.

16 The law says that we have to talk to you in the same  
17 order in which we received you today. So of the people  
18 we're going to ask back tomorrow, for example, if you  
19 were to be the first person that we're going to talk to  
20 tomorrow morning and if you don't get here until 9:15,  
21 that means that we can't have talked to anybody. And I  
22 want to share that information with you so that when you  
23 do roll in here at 9:15, you'll understand how quickly  
24 you have made about a dozen powerful enemies; because we  
25 can't do this without you being here.

53

1 back here. I'm going to try and do this in  
2 chronological order, meaning that if your number happens  
3 to be 75, and if I call it and the next number I call is  
4 78, 76 and 77 don't need to worry about coming back.  
5 I'm not going to jump around unless I screw this up, and  
6 I'm capable of that. So, please, everyday it's 8:30.  
7 Everyday it's before 8:30 out here in this hallway. You  
8 know about the gonculator, or whatever those things are  
9 called, the metal detectors. It's crowded in the  
10 mornings, so plan on -- wherever it is you're coming  
11 from and whatever your mode of transportation is, plan  
12 on factoring in your parking. Plan on factoring that  
13 into getting to where you can be up on the eighth floor  
14 of this building before 8:30 tomorrow.

15 Okay. First one is Number 2, Mr. George  
16 Pena; Number 4, Miss Joyce Scott; Number 6, Frances  
17 Hashagen; is that correct? Number 8, Ruben Cardenas;  
18 Number 9, Eric Hernandez; Number 10, Alejandra Amie;  
19 Number 12, Brenda -- is it Waggy or Waggy?

20 VENIREPERSON: Wagey.

21 THE COURT: Number 18, Jerri Tinnemeyer;  
22 Number 19, Ramie Cooksey; Number 21, Stacie Sibley.  
23 Those ten people by 8:30 tomorrow morning, outside this  
24 door. Is there anybody here who has any questions about  
25 who those ten are, or about where you're supposed to be,

52

1 If you're the first person we talk to,  
2 we're not going to keep you here. As soon as we're  
3 through talking to you, you're free to go. But we can't  
4 start without all the others. And my notion -- and I'm  
5 speaking for myself, and I'm not speaking for the  
6 lawyers. My notion is this: That you folks are  
7 entitled to rely upon the accuracy of the commitments  
8 that I make to you as it affects a clock. Therefore, I  
9 am entitled to rely on yours. I will keep my word to  
10 you as to being able to get you out of here on time, but  
11 I cannot keep that word to you if you refuse to let me  
12 get started on time.

13 So, it's your deal, not mine. But it's  
14 kind of like the parent that grounds the child for two  
15 weeks. Parents can't go out, either. So, while it's  
16 your fault, I'm stuck with it. And it upsets me. And I  
17 wish I weren't this way, but I'm real goofy about a  
18 clock.

19 (Speaking to bailiff) Where in the hell  
20 did these people come from? Good Lord, don't let that  
21 happen.

22 I have no idea where I was, but you people  
23 will either pick it up or you won't. Be on time. All  
24 right. I'm going to call out the numbers and the names  
25 of the people that we want here and the days we want you

54

1 or about when you're supposed to be there?

2 Okay. The following seven people, Friday  
3 morning, before 8:30, outside this doorway: Number 15,  
4 Kelly Trainor; Number 22, Henry Spencer; Number 23,  
5 Linda Wyatt; Number 24, Dana Goodman; Number 27, Raymond  
6 Russell; Number 28, Louis Willis; and Number 30, Deanna  
7 Jones. Is there any question in anybody's mind as to  
8 who the seven people are that we will want to be here  
9 Friday morning at 8:30?

10 Sir?

11 VENIREPERSON: I notice my number wasn't  
12 called either time.

13 THE COURT: I wouldn't ask no questions.  
14 I might figure out -- don't worry about it. I'm going  
15 to touch on it. If your number wasn't called, you're  
16 going to be a very happy person. If your number is  
17 called, you're going to be back here. We'll try to make  
18 you even happier. We may fail, but we're going to make  
19 the effort.

20 Is there anybody whose number was called  
21 who has any questions at all for me that will be of the  
22 type question that the law will permit me to answer at  
23 this stage? And I guess the question I'm trying to  
24 limit you to is, do you know where you're supposed to be  
25 and when you're supposed to be there? In just a second



55

1 I'm going to excuse you.

2 I guess it's thirteen of you whose numbers  
3 weren't called. You thirteen folks don't need to worry  
4 about coming back. In just a second you're going to get  
5 a piece of paper, an excuse, a permit -- what do we call  
6 them in junior high? Hall passes -- to let somebody  
7 know who just is demanding to know where it was you were  
8 today. Whether that be your employer or your spouse,  
9 that's your deal. But you're going to leave here armed  
10 with some document to show where you have been today.  
11 If you are due back here, we'll give you another one as  
12 that thing unfolds.

13 Mr. McClellan, Mr. Hill, anything further  
14 I need to visit about?

15 MR. HILL: No, Your Honor.

16 MR. MCCLELLAN: No, Your Honor.

17 THE COURT: Anybody at all have any  
18 questions for me? If you folks don't have any questions  
19 at all for me, when you get these documents, please feel  
20 free to leave. Please, if you are coming back, remember  
21 where it is you are. Remember where you parked. If you  
22 like that parking place, do it again tomorrow. If you  
23 want to move around and get another parking place, do  
24 that. But plan your travel in such a way that you can  
25 be through the metal detector devices and up here by

1 THE STATE OF TEXAS )

2 COUNTY OF HARRIS )

3 I, Pamela Kay Knobloch, Official/Deputy  
4 Official Court Reporter in and for the 179th District  
5 Court of Harris County, State of Texas, do hereby certify  
6 that the above and foregoing contains a true and correct  
7 transcription of all portions of evidence and other  
8 proceedings requested in writing by counsel for the  
9 parties to be included in this volume of the Reporter's  
10 Record, in the above-styled and numbered cause, all of  
11 which occurred in open court or in chambers and were  
12 reported by me.

13 I further certify that this Reporter's Record  
14 of the proceedings truly and correctly reflects the  
15 exhibits, if any, admitted by the respective parties.

16 I further certify that the total cost for the  
17 preparation of this Reporter's Record is \$\_\_\_\_\_ and  
18 was paid by Harris County.

19 WITNESS MY OFFICIAL HAND this the \_\_\_\_ day of  
20 \_\_\_\_\_, 1999.

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20 APPELLANT: CHARLES MAMOU, JR.  
21 CAUSE NO. 800112

56

1 8:00 o'clock in the morning.

2 One last chance. Any questions? Okay.

3 Thank y'all very much. And when you get your things,  
4 you're free to go.

5 (Court adjourned.)

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(note: contained in  
separate binder due  
to a different court  
reporter)



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(note: contained in a  
separate binder due to  
a different court reporter)

## REPORTER'S RECORD

VOLUME 6 OF 25 VOLUMES

TRIAL COURT CAUSE NO. 800112

CHARLES MAMOU, JR. ) IN THE DISTRICT COURT

Appellant )

)

VS. ) HARRIS COUNTY, TEXAS

)

THE STATE OF TEXAS )

Appellee ) 179TH JUDICIAL DISTRICT

\*\*\*\*\*

## VOIR DIRE EXAMINATION

\*\*\*\*\*

On the 13th day of September, 1999, the following proceedings came on to be heard in the above-entitled and numbered cause before the Honorable Bob Burdette, Judge Presiding, held in Houston, Harris County, Texas:

Proceedings reported by computer aided transcription/stenograph machine.

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(Jury panel brought in and seated.)

THE COURT: Good morning to you. And first off, let me tell all of you how much I appreciate your being here on time. You have no idea how frustrating it is to have to wait for somebody, and you don't even know who it is you're waiting for. We've asked you to come here so that we might visit with you about prospective service as a juror in the case of the State of Texas verse Charles Mamou, Jr.

Mr. Mamou, stand up and face the jury panel.

Mr. Mamou is represented by his two attorneys, Mr. Wayne Hill, who had to step out just a second and he'll be right back, and Mr. Kurt Wentz. The State of Texas is represented by two of her Assistant District Attorneys, Mr. Lyn McClellan and Miss Claire Connors.

Thank you. Be seated, please, folks. First off, ladies and gentlemen, is there anybody here who, either because of familiarity of face or familiarity of name, feel that you know any of the four people to whom you have been introduced and seen and the fifth person to whom you have been introduced and have not yet seen?

Yes, ma'am?

4

VENIREPERSON: I know Charles Mamou.

THE COURT: Your number, please?

VENIREPERSON: 64.

THE COURT: Thank you very much. In this case, ladies and gentlemen, Mr. Mamou stands charged by indictment with the offense of capital murder that's alleged to have occurred in Harris County, Texas, on or about the 7th day of December of 1998.

Now before we go any further, let me tell you a couple of things that I think are probably on the minds of some of you, if not many of you. First off, you went through the process of filling out these questionnaires for us for the purposes of speeding this operation up; and I can assure you it did speed it up.

Secondly, you might have had a number of different thoughts in your mind about what might happen to you as a result of being asked to come over here to visit with us about this particular case.

Thirdly, my best guess is, as for ninety percent of you, the only association you have about what goes on at the courthouse, except from the standpoint of a capital murder case, is what you saw on television with O.J. Simpson. Let's just stop right there.

And fourthly, your real association with the courthouse is watching Judge Judy. See, my job gets

5

harder and harder, trying to take all that conditioned process out of you and tell you that you're really in the real world.

Let's talk for a couple of seconds. First off, the business about this being a capital murder case, if you came here thinking that the chances were real good that you were going to get locked up in some old dingy hotel room, kept away from your family, your friends, your job, your loved ones for weeks or months at a time, I'm going to tell you, don't think that way anymore. That is simply not going to happen to you. And the reason that I can promise to you it's not going to happen is because if you guys got locked up in a dingy old hotel room, that means I'd have to get locked up in one; and I'm not about to do that. So just don't worry. It's not going to happen.

Next let's talk about Judge Judy for a second. My eighty-year-old father simply does not understand, after having spent all of the money that he spent to educate me, why I can't perform feats of justice at exactly the same sixteen-minute pace everyday that Judge Judy does. I simply haven't the ability to explain it to him. Please keep in mind one thing about Judge Judy and those kinds of things. You never see them talking to lawyers. They're only talking to

6

citizens that they can harass. In here we talk to lawyers. So right there you know it's different.

Next, in this kind of a case we have to -- this kind of case being the kind of case wherein the State has made known and they have made known to the defendant, they have made known to the Court, they have made known to everybody that in the event the defendant in this case is found guilty, the State is going to attempt to persuade the jury through the evidence they present to return a verdict in such a way that causes the death penalty to be imposed.

At the conclusion of all of the evidence in the case, whether the jury does agree or does not agree, we don't know; but that's the point of the trial. But at any rate, where the death penalty is a possible punishment, whether it's the appropriate punishment, nobody will ever know until the evidence is all in. But where the death penalty is a possible punishment, the law says that we have to go about the jury picking process in a different way than what we would go through on a regular case.

More specifically, the difference is this: We have to talk to each one of you on an individual basis now. There being sixty of you here, obviously it would take sixty times longer to talk to each of you

7

1 individually than it's going to take to talk to sixty of  
2 you one time in a group. I understand that. Let me  
3 tell you something else that we understand. These four  
4 lawyers and myself all understand that every single one  
5 of you that's here today is here today laboring, to some  
6 degree or another, under an inconvenience. If the  
7 inconvenience under which you're laboring is absolutely  
8 nothing different than the fact that when you backed out  
9 of your driveway today to come down here, you made a  
10 left at the stop sign to come here instead of making a  
11 right that you ordinarily would have made to go to work.  
12 So, right there things are different, and that just  
13 throws everything off.

14 You're also here in a place that's got  
15 some sort of hocus-pocus to it; because you know there  
16 is funny stuff that goes on in the courthouse, but you  
17 just can't identify for sure what it is at all times.  
18 And as a juror, you come here -- and I guess the best  
19 explanation that I've ever had about a juror, a person  
20 being a juror is it's a lot like being a pallbearer at a  
21 funeral. You're in a place you do not want to be. You  
22 are doing something you do not want to do. You do not  
23 know for certain what it is that's expected of you next.  
24 And the only reason you're doing it in the first place  
25 is out of a sense of duty. So what I want to spend a

8

1 couple of seconds talking to you about is jury service  
2 in this kind of a case, what can happen.

3 First off, there is nothing more complex  
4 to being a juror in a criminal case than going to a  
5 strange town, picking out somebody on the street for the  
6 purposes of asking them directions and then deciding, do  
7 you believe them or not? All we're going to want you to  
8 do is sit in the chairs and do three things; listen,  
9 evaluate what you heard, and then react to your  
10 evaluations of what you heard. That's your verdict.  
11 That's all this is about.

12 Now, let's talk about the trial itself.  
13 How can it come about? The general framework involved  
14 in a trial like this, once the jury is selected, can  
15 come in two parts. The first part of the trial, the  
16 jury -- this is Mr. Hill. I told you he would be here.  
17 Does anybody recognize Mr. Hill? Okay. A trial like  
18 this can come in two parts. The first part of the  
19 trial, the jury's only concern is going to be with  
20 deciding the question of whether the defendant is or is  
21 not guilty.

22 If the defendant is not guilty, the case  
23 is over with and that's the end of that. If the  
24 defendant is found guilty, we come back and we have  
25 another short trial. Additional evidence can be

9

1 presented to you. And the evidence at the second phase  
2 of the trial is going to be remarkably different from  
3 the evidence at the first phase of the trial, because  
4 the purpose for the second phase is different than the  
5 purpose for the first phase. Since the first phase of  
6 the trial the jury concern is going to be with deciding  
7 whether the defendant is or isn't guilty, the focus of  
8 the evidence is going to be on the offense that was  
9 committed. Who did it? Where was it done? When was it  
10 done? How was it done? What was the relationship of  
11 the parties involved, if there was one? Everything  
12 about the crime can be presented to you at the first  
13 phase of the trial.

14 If you find the defendant guilty, the  
15 second phase of the trial the focus of the evidence is  
16 going to shift. It's going to get off the crime that  
17 was committed, and the focus is not on the crime that  
18 was committed. The second phase is going to be of the  
19 character, the background of the defendant on trial. At  
20 the second phase of a trial wherein a person has been  
21 found guilty of capital murder, you're entitled to hear  
22 basically about every single good thing some defendant's  
23 ever done before in his or her life, if there are any  
24 good things. You can also hear basically at the second  
25 phase of a trial, wherein a person has been found guilty

10

1 of capital murder, about every single bad thing some  
2 defendant's ever done before in his or her life, if  
3 there are any bad things. And you take that good stuff  
4 and that bad stuff that you hear at the second phase of  
5 the trial, you pile it onto all of the stuff you heard  
6 about the crime and how it was committed at the first  
7 phase of the trial, and you use every single bit of it  
8 in helping you decide what do you think is the right  
9 punishment in the case based upon the crime committed  
10 and the person that committed it.

11 We want to give you information about the  
12 defendant for exactly the same reason that you made  
13 decisions during the course of your life, when you're  
14 raising children, about what do you do when you tell a  
15 child not to do something and they do it again? You  
16 might react one way. You might react differently if you  
17 told a child ten times not to do something and they  
18 continued to do it. So we want you to hear about the  
19 good stuff, the bad stuff, whatever there is about a  
20 defendant on trial. That's the way the trial could  
21 flow.

22 Now, let's talk about a jury's job. What  
23 do you do? What do you, the jury, do in relation to me,  
24 the Judge, and what it is I do? Well, you are the  
25 exclusive judges of the facts proved, of the credibility

11

1 of the witnesses, and the weight that you want to give  
2 to their testimony, meaning as to the first hypothetical  
3 witness, after that person has concluded testifying, you  
4 may very well say to yourself, I believe 100 percent of  
5 what that witness says. At the conclusion of the  
6 testimony of the second hypothetical witness, you may  
7 say to yourself, I don't believe a single word that  
8 witness says. And at the conclusion of the third  
9 hypothetical witness' testimony, you may very well say  
10 to yourself, well, I believe some of what they said; but  
11 I don't believe some of what they said, too. That's  
12 your call.

13

14 You're the exclusive judges of the facts  
15 proved and of the credibility of the witnesses and of  
16 the weight to be given their testimony. And the weight  
17 to be given their testimony is important for this  
18 reason: If in some imaginary case there are fifty  
19 witnesses who testify, obviously all fifty witnesses  
20 can't say something of exactly the same magnitude. So  
21 you decide, A, who was believable and how much weight to  
22 give to that believable testimony. That's your job. My  
23 job, on the other hand, has absolutely nothing to do  
24 with sorting out who the believable witnesses are.

25

My job, on the other hand, has to do with  
listening to what the witnesses say. Whether I believe

13

1 give some witnesses a shot. A derelict can tell the  
2 truth. You got to hear what the person has to say.

3

Secondly, we can't choose to make  
4 decisions about the believability or the lack of  
5 believability of a witness' testimony simply and only  
6 because of the witness' occupation and for no other  
7 reason. Look at this. What would happen if we said,  
8 all right, down there at the courthouse everybody who  
9 ever testified in a criminal case that was either a  
10 junior high school principal or an accountant, now those  
11 people have to always be believed simply and only  
12 because they are junior high school principals and  
13 accountants. But if we had anybody down at the  
14 courthouse that ever testified that was either a used  
15 car salesman or a lawyer, those people can't possibly be  
16 believable simply because they are a used car salesman  
17 or lawyer. You decide who it is you want to believe,  
18 but you make that decision on the basis of the quality  
19 and the content of that witness' testimony, not simply  
20 because they possess some occupation for which you might  
21 have a great degree of fondness or one for which you  
22 might hold a substantial amount of disdain. That can  
23 come into play in a case like this for an obvious  
24 reason.

25

I would assume, being the nature of the

12

1 them or not makes absolutely no difference. I provide  
2 you with the law that applies to the testimony that the  
3 witnesses have presented. So I'm going to give you in  
4 the Court's charge a whole bunch of laws, some of which  
5 you may find don't even apply; because the reason that  
6 those laws are in the charge might become -- might be  
7 prompted by some testimony presented by witnesses that  
8 you determine you don't believe. So, if you don't  
9 believe them, the law that applies to their testimony  
10 doesn't apply. So the point of it is you decide what  
11 the believable facts are. I arm you with the evidence.  
12 I arm you with the law on all of the evidence that's  
13 presented. And out of that, we put the two things  
14 together and come up with what we think is the right  
15 decision to reach based upon the law and the evidence  
16 that's involved in the trial of a case. That's the  
17 comparative function of the Judge and the jury.

18

Now insofar as a jury is concerned, there  
19 is only one rule that exists that affects how a jury  
20 determines the credibility, the believability of  
21 witnesses. And I think that you'll find the rule makes  
22 a whole lot of sense. The Rule is simply this: We  
23 can't choose to either automatically believe or  
24 automatically disbelieve what some witness says before  
25 that witness ever says it. Makes sense? You got to

14

1 crime involved, or the crime alleged, I should say, that  
2 there is going to be testimony from police officers.  
3 Our law says that police officers don't get one bit of  
4 more credibility because they're carrying a brown  
5 uniform or blue uniform around on their shoulders than  
6 if they weren't carrying one around on their shoulders.  
7 The police officers are no more believable and no less  
8 believable than any other witness. And the reason we  
9 know that is because every single law enforcement  
10 officer that exists on the face of this earth is one who  
11 belongs to the human race. And no person of the human  
12 race is more believable than the other portion.

13

So, what I'm saying is this: If, when you  
14 were a child growing up, you grew up with a kid next  
15 door and his name was Johnny and you thought Johnny was  
16 the neatest and nicest kid, had all the sorts of  
17 integrity, great judgment and wonderful, and Johnny grew  
18 up to be a law enforcement officer, just because Johnny  
19 was the neatest, nicest kid you had ever known doesn't  
20 mean that everybody that Johnny works with is. Now  
21 maybe some of them are; but then again, maybe some of  
22 them aren't.

23

The flip side of the coin is that you're  
24 driving home one night. It's 11:00 o'clock, and you  
25 have had a harrowing day. And some cop stops you and



15

1 pulls you over, completely unjustifiably charges you  
2 with some sort of traffic offense that you know you  
3 didn't commit, was rude to you, hassled you, harassed  
4 you, was just simply a miserable experience for you.  
5 That doesn't mean that every police officer who comes  
6 and testifies is just that rude, is just that same -- is  
7 just that unreasonable. Now, maybe some of them are;  
8 but then again, maybe some of them aren't. The point of  
9 it is don't base your decision on the credibility of a  
10 witness because of an experience that occurred before in  
11 your life. Base your decision on the credibility of a  
12 witness on the quality and the content of their  
13 testimony, how they give it to you, how much trust they  
14 project in your mind's eye, and how does it fit with all  
15 the other information you possess about the  
16 circumstances in the crime.

17 So, what we're simply saying is this: No  
18 human being comes to the witness stand being presumed to  
19 tell the truth before they ever do. No witness ever  
20 comes to the witness stand being presumed to never tell  
21 the truth before they ever do. Anybody have any  
22 quarrel, any disagreement, any comment, any discussion  
23 about that facet of our life?

24 Now if you came here today thinking that  
25 if you're a juror in this case you're going to hear a

16

1 mess of out and out lies and goings on from the witness  
2 stand, I'm going to tell you that is something that can  
3 happen, and does. But I'll tell you something else.  
4 What happens more often than not is that you have people  
5 who come along, take the witness stand, and tell about  
6 an experience or event that occurred in their life and  
7 give to you the best answers to the questions that are  
8 asked of them as they can possibly recall. You may  
9 very well, as a result, have inconsistencies from one  
10 witness to another witness to another witness. But an  
11 inconsistency is far different than an intentional lie.

12 We could take you sixty folks out in the  
13 hallway, for example, right now, stage some sort of  
14 dramatic event for your benefit, terminate the event,  
15 bring each of you in here individually and ask you one  
16 at a time, what did you see? And you know we're going  
17 to get sixty different answers. Some of you are going  
18 to be closer to the event that's going on out there that  
19 you could see it. Some of you couldn't see it. But you  
20 could hear it. Some of you couldn't see it, and you  
21 couldn't hear it. Some of you are right up front; and  
22 you could have seen it, and you could have heard if you  
23 wanted to. But you're so disgusted with the whole deal,  
24 you want to go home.

25 Well, that can happen up on the eighth

17

1 floor of this building. It can happen out in the  
2 street. The point being, just because there are  
3 inconsistencies doesn't amount to an intentional lie.  
4 But it is your job to sort out the credibility of all  
5 those witnesses, with the consistencies, without the  
6 consistencies, however it is they find. That's what  
7 goes on here.

8 Now I mentioned the Judge Judy business  
9 and the lawyering program and so forth. And I remember  
10 Perry Mason programs. I don't know if y'all remember  
11 Perry Mason. I used to wonder why the citizens of the  
12 imaginary community where Hamilton Burger, who was the  
13 District Attorney -- why those citizens would always  
14 continue to re-elect Hamilton as their District Attorney  
15 when he never could win a case. And it's not something  
16 that's worthy of thinking about; but it is something  
17 worthy, I think, of factoring in to show you how goofy  
18 those things are.

19 I watch the same newscasts you do, and I  
20 spend the same three or four minutes at the first of  
21 every newscast just like you do, having to watch all the  
22 dead bodies being dragged out of apartments, put in  
23 purple body bags, shoved into a car, taken away, or you  
24 hear three minutes worth of about six or seven killings.  
25 And if we don't have enough good killings in town, the

18

1 media will run off to St. Paul, Minnesota, to talk about  
2 one of theirs. And then the next thing that happens is  
3 they take a commercial, because they've got to go sell  
4 Tylenol.

5 And you've got to wonder, why am I  
6 listening to this? Because I know I'm not hearing  
7 anything about it. The point being, now this is the  
8 location. The courtroom is the location of where you do  
9 get to hear about it, and that's what we're going to ask  
10 you to do. We know that we aren't going to get the best  
11 possible product you, the jury, possess if -- that is to  
12 say, your attention, your evaluation and your result --  
13 we're not going to get it if we waste your time. So  
14 we're not going to waste your time, because it's  
15 self-defeating for all of us, because what we do want is  
16 your best work product.

17 So, let me tell you how we're going to go  
18 about this. We're going to spend a while this morning  
19 talking about some general principles of law that apply  
20 to this case. Certain applications apply to every kind  
21 of criminal case that there is. We're going to ask some  
22 of you to come back. I don't know for sure how many  
23 that's going to be just yet. But we're going to bring  
24 some of you back on Tuesday. We're going to bring some  
25 of you back on Wednesday, some of you back on Thursday,



19

1 some of you back on Friday.

2 Now if you're due back on Friday, Tuesday,  
3 Wednesday, Thursday, blow us off. Don't even factor us  
4 into your life. You do exactly what you would have done  
5 exactly the same way you would have done it. We want  
6 you here Friday. So we don't want you around us if we  
7 aren't going to be able to use you, because we're using  
8 up the good time you've got. And we don't want to do it  
9 that way. We want to do it by doing things with you.

10 Now what we're going to do, what we have  
11 been doing, is we're talking to folks individually for  
12 the purposes of creating a pool or a panel of folks.  
13 Going to be somewhere around 48, maybe 50, that we're  
14 going to get back one day. That's going to be  
15 Wednesday, the 29th of September, two weeks from this  
16 coming Wednesday. We're going to spend a couple of  
17 hours with you that morning. And on that day we're  
18 going to choose the twelve people who are going to be  
19 the jurors. So we're going to want you today -- you  
20 know that because you're already here -- we're going to  
21 want you perhaps one other day this week, depending upon  
22 how that day goes. We're going to want you on the 29th  
23 of September. The evidence in this case is going to  
24 begin on the 4th day of October, which is three weeks  
25 from today; and the trial is going to last for longer

20

1 than one work week, but it is not going to last as long  
2 as two full work weeks. That's the case in a nutshell.  
3 We'll talk more about that in just a couple of minutes.

4 But having said that, let's talk for just  
5 a couple of seconds about these kinds of cases, that  
6 being criminal cases generally. At the conclusion of  
7 the testimony at each of the phases of the trial, that  
8 being the first phase of the trial and, if the defendant  
9 is found guilty, at the conclusion of the testimony at  
10 the second phase of the trial, I'll give you what's  
11 called the Court's charge.

12 The Court's charge is going to be a  
13 document that's going to have -- could be eight to ten  
14 to twelve pages of legal instructions and definitions  
15 that are given to you simply for the purposes of setting  
16 out for you what the law is based upon the testimony  
17 that was presented and some definitions and instructions  
18 to assist you during the course of your deliberations.

19 I want to talk to you for just a couple of  
20 minutes about some general principles of law that will  
21 certainly be contained within the Court's charge. First  
22 off, we have already talked about the fact that in this  
23 case this defendant stands charged by indictment with  
24 offense of capital murder. I will tell you in the  
25 Court's charge, and I'm going to tell you now, the fact

21

1 that some human being was arrested for an offense, the  
2 fact that some human being was charged with having  
3 committed an offense, the fact that some human being was  
4 indicted for having committed an offense, is not and  
5 cannot be considered by a jury as any evidence of that  
6 human being's guilt.

7 You say, why would that be? Well, how  
8 about this? Let's say two months ago, here in Houston,  
9 Texas, a burglary was committed. And just right now  
10 through that door comes twelve Houston Police Officers  
11 and arrest me today for having, two months ago,  
12 committed that burglary. Can you see that the singular  
13 event of my being arrested today cannot possibly be any  
14 evidence that two months ago I committed that burglary?

15 Now those twelve police officers may very  
16 well have nine buckets full of other perfectly wonderful  
17 evidence that does show that two months ago I did commit  
18 that burglary, but the fact they arrested me today is no  
19 evidence that I did it. Anybody have any quarrel or  
20 dispute with that? The fact that I was charged today  
21 with having committed that burglary is no evidence that  
22 two months ago I did it. The fact that a Grand Jury  
23 indicted me today for having two months ago committed  
24 that burglary is no evidence that I did it. All those  
25 three processes are steps that are required to be taken

22

1 to bring a case into a courtroom so that twelve jurors  
2 can be selected and hear testimony to see whether or not  
3 I committed that burglary two months ago.

4 So, I will tell you in the Court's charge  
5 and I will tell you again, the fact that somebody was  
6 arrested for, the fact that somebody was charged with,  
7 the fact that somebody was indicted for having committed  
8 a crime. That event, the arrest or the charge or the  
9 indictment -- or those events cannot be considered by  
10 any Judge or by any jury as any evidence that, in fact,  
11 the person charged, arrested, or indicted committed that  
12 crime. Is there anybody here who has any quarrel, who  
13 has any dispute or who has any disagreement with that  
14 facet of our law?

15 Back to these television shows, very  
16 briefly, I'll bet that somewhere along the way many of  
17 you, if not all of you, have heard this phrase, person  
18 was found guilty beyond a shadow of a doubt. Did you  
19 ever hear about the shadow of a doubt business? We get  
20 that from the Perry Mason shows. It is not necessary  
21 for the State, the District Attorney, the prosecution in  
22 order to obtain a conviction in a case. It is not  
23 necessary for them to show a jury a person's guilty  
24 beyond a shadow of a doubt. It is not necessary in  
25 order to obtain a conviction for the prosecution to

23

1 prove to a jury a defendant's guilt beyond all doubt.  
 2 It is not necessary for the State, in order to obtain a  
 3 conviction, to prove to a jury through their evidence a  
 4 person's guilty beyond every doubt. It is, however,  
 5 necessary for the State's evidence to persuade the jury  
 6 beyond a reasonable doubt as to the defendant's guilt.  
 7 They don't have to show a person's guilt beyond a shadow  
 8 of a doubt, beyond all doubt, beyond every doubt. That  
 9 has never been the law in the country. That's presently  
 10 not the law in this country. In all reasonable  
 11 probability, it never will be the law in this country.  
 12 It is, however -- the law presently, has always been,  
 13 and it'll certainly continue to be, that the State must  
 14 prove a person's guilt beyond a reasonable doubt.

15 In the Court's charge I will give the  
 16 definition as to what, in our state, a reasonable doubt  
 17 means. I'm now going to tell you the definition I give  
 18 you in the Court's charge, because I want you to be  
 19 aware of it. It is not required that the prosecution  
 20 prove guilt beyond all possible doubt. It is required  
 21 that the prosecution's proof excludes all reasonable  
 22 doubt concerning the defendant's guilt. A reasonable  
 23 doubt is a doubt based upon reason and common sense  
 24 after a careful and impartial consideration of all of  
 25 the evidence in the case. It is the kind of doubt that

24

1 would make a reasonable person hesitate to act in the  
 2 most important of his own affairs. Proof beyond a  
 3 reasonable doubt, therefore, must be proof of such a  
 4 convincing character that you would be willing to rely  
 5 and act upon it without hesitation in the most important  
 6 of your own affairs.

7 That is the quality of the testimony that  
 8 the State must present to you and that you must believe  
 9 in order to find somebody guilty of a criminal offense,  
 10 whether it is a capital murder case, whether it's a  
 11 speeding ticket, whether it's a shoplifting case,  
 12 whether it's an aggravated robbery. It makes no  
 13 difference. That is the level of testimony that the  
 14 State must present and a jury must believe before a  
 15 person could be found guilty of the offense.

16 Now the flip side of that coin is this:  
 17 Since it is the State's job to prove a person's guilt  
 18 beyond a reasonable doubt and it is -- it is never ever,  
 19 ever a defendant's job to prove that he or she is not  
 20 guilty. We know from our civics classes that in every  
 21 criminal case a person charged with having committed a  
 22 crime starts the trial off being not guilty, stays not  
 23 guilty until the time comes, if it ever does, when the  
 24 State's evidence overcomes that presumption of being not  
 25 guilty and establishes beyond a reasonable doubt in the

25

1 jury's mind that the defendant is, in fact, guilty. So,  
 2 no defendant has to prove his or her innocence. The  
 3 State always has to prove the guilt of the defendant on  
 4 trial.

5 You might say to yourselves, well, I don't  
 6 think that's right. I think the defendant ought to have  
 7 to prove he didn't do it, or she didn't do it. And I'd  
 8 ask you to consider this for a second. Today is the  
 9 13th day of September, and it's 1999. And let's go back  
 10 five years ago today, 13th of September of 1994. And I  
 11 pick that day just to be far enough back in our lives to  
 12 where maybe it's a day that we don't have an independent  
 13 recollection as to exactly what we did. Throughout the  
 14 course of the day, if you do have a recollection, if it  
 15 was a day that there was some singularly important event  
 16 to you, a birthday, anniversary, whatever it might be,  
 17 pick another day. Pick August the 8th or the 17th or  
 18 something.

19 But let's just say when we conclude this  
 20 process here this morning, you're out there at the  
 21 elevator bank waiting to get an elevator to get out of  
 22 here. Nice deputy sheriff of Harris County, Texas,  
 23 walks on up to you and says, Excuse me. Are you Mr. A?  
 24 Are you Mrs. B? You say, Yes, I am. And the deputy  
 25 sheriff says, Well, let me tell you something. I need

26

1 to visit with you; because while you were in that  
 2 courtroom making yourself available for jury duty, a  
 3 Grand Jury in Harris County, Texas, in one of their  
 4 secret sessions -- and the law requires their sessions  
 5 to be secret -- but one of the Grand Juries in Harris  
 6 County, in one of their secret sessions just this  
 7 morning, has returned an indictment against you,  
 8 charging you with having, on the 13th of September,  
 9 1994, committed the offense of sexual assault of a  
 10 child.

11 Now would you tell me, please, what the  
 12 second thing is that you would do after receiving that  
 13 information? The first thing we know is you would be  
 14 picking yourself up off the floor from having passed  
 15 out, and we understand that. How would you prove you  
 16 didn't do that? Quite simply. You wouldn't. You might  
 17 say to yourselves, If the 13th of September of '94 was a  
 18 workday, I know I ordinarily get to work at 8:15 in the  
 19 morning and usually get home at 6:15. I might check out  
 20 a calendar and see that the 13th of September was a  
 21 workday. If it was, that means you're armed with the  
 22 ability to prove to a jury when it was you go to work  
 23 and usually what time you get home. And you can't, in  
 24 your wildest dreams, believe that proves you did not  
 25 commit that crime on that day. The point being, it's

27

1 not your job to prove you didn't do it. It's the  
2 State's job to prove you did do it. I don't know how  
3 things were when and where you grew up as a kid; but I  
4 knew where I grew up, my little peer group we had, if  
5 some of the kids that I ran around with when I was four  
6 or five or six years old blamed us for having done  
7 something wrong, they had to prove that we did something  
8 wrong. The people doing the blaming had to do the  
9 proving.

10 That same little elementary system of  
11 justice is what works in a courtroom. The people doing  
12 the blaming are the people who have to do the proving.  
13 The State's doing the blaming. The State's got to do  
14 the proving. How much proving does the State got to do?  
15 I don't know; but I do know that whatever the amount of  
16 proof is, it's got to be enough that satisfies the jury  
17 beyond a reasonable doubt that their blame is accurate  
18 and that the defendant did, in fact, commit the offense.  
19 The point being, it is never ever, ever this defendant's  
20 job to prove that he didn't commit the crime. It is  
21 always, always, always the State's job to prove that he  
22 did commit it, and they must prove that beyond a  
23 reasonable doubt. Is there anybody here who has any  
24 quarrel, discussion, objection with that facet of our  
25 law?

28

1 Now let's talk about something that's a  
2 little bit more nebulous. We ask you to give of your  
3 time and come down here for the purposes of making a  
4 powerfully important decision, deciding, for example,  
5 whether a person is or is not guilty of capital murder.  
6 And if you decide they are guilty, then decide which  
7 punishment should the person receive, life or death?  
8 That's heavy stuff. And you know as well as I do that  
9 we're going to ask you to do it. And we may not tell  
10 you everything that you want to hear. That gets  
11 frustrating. And I want to talk about it, because I'll  
12 bet you when we're through with this conversation it  
13 will make sense to you.

14 First off, every single day of our lives  
15 when we make decisions, we try to assemble all of the  
16 very best information we can get about it. We're having  
17 to decide so that we can broaden the comfort zone within  
18 which we exist for the purpose of making that decision.  
19 What do we do? We go out and we'll buy a car. We go  
20 car shopping. We talk to a half a dozen people. We  
21 might get on the Internet. Whatever you do, you  
22 assemble together all the information you possibly can.  
23 You're in the market for buying a house. What do you  
24 do? You go look at houses. You go get all the  
25 information you can get. You're getting ready to get

29

1 married. You go spouse shopping. Well, sometimes you  
2 don't always get good information, but you get the best  
3 introduction. The point being, you want to feel as good  
4 as you can possibly feel about being informed as it  
5 relates to the decision that's confronted. You came  
6 down here. And you know, you might not get to hear  
7 exactly what you thought.

8 First off, I know that at the conclusion  
9 of a trial there are a lot of times when a jury goes  
10 out, a juror says to him or herself, boy, I sure wish  
11 Lawyer A had asked such-and-such a witness so-and-so  
12 question. Perfectly natural thought. And frankly, it  
13 might have been the best question in the whole case.  
14 You might say to yourselves, well, why didn't Lawyer B  
15 prove such-and-such. Legitimate thought. Good question  
16 to you. But keep in mind that evidence may never have  
17 existed in the first place. Just because you wanted  
18 them to ask it doesn't mean that the evidence ever  
19 existed. So, keep in mind that your decision in a case  
20 is going to have to be based on what you do hear.

21 Now, you're back to this getting all the  
22 information together business. You're at the house. I  
23 know this has happened to some of you. May have  
24 happened to most of you. It's happened to me. Kid  
25 coming in the room says, daddy, you know what your other

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1 daughter did? What did she do? She ate the cookies  
2 that mom saved for me. What do you do? You get the  
3 other kid in the room. Every single one of us does  
4 that. We fall for it time after time, child after  
5 child. Why? Because we want to play one of them off on  
6 the other. Why? Because we're not so sure we believe  
7 the one doing the blaming.

8 You're at work. Again, we want to get all  
9 the information we can. You're at work. Job for years  
10 has been to manufacture a widget at seventy-five cents a  
11 unit. Out of the blue one day, somebody comes and says,  
12 hey, I know how we can do this widget for sixty-five  
13 cents, a whole dime cheaper. Same quality. Everything  
14 is the same. What do you do? You'll get everybody up  
15 and down the marketing chain, everybody up and down the  
16 manufacturing chain to see, can we really do this widget  
17 a dime cheaper?

18 You're on the committee at church. Your  
19 job is to hire the replacement for the preacher who has  
20 just retired. What do you do? You want to talk to all  
21 of them, see what plans do they have? Same one. You're  
22 getting ready to elect next year's PTA president. What  
23 do you want to do? You want to get all of the  
24 information you can possibly get. We bring you down to  
25 the courtroom and tell you right now, you may not get to



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1 hear everything you want to hear, and it just simply  
2 drives you crazy.

3

4 Consider this: That kid who blamed her  
5 little sister for having eaten the cookies that her mom  
6 has been saving for her is not going to have to prove  
7 that to us beyond a reasonable doubt; because the kid  
8 who does eat the cookies is not going to receive the  
9 death penalty. Here that's what happened. The guy who  
10 claims to you, we can make this widget for sixty-five  
11 cents instead of seventy-five cents doesn't have to  
12 prove it to you beyond a reasonable doubt. If it's  
13 wrong, he's not going to die for it.

14

15 The preacher who says, I'm campaigning for  
16 this job in your church because I sure do like your  
17 congregation, and I promise to increase its size by  
18 fifty percent in the next two years is not going to get  
19 executed if he fails to perform. That's what happens in  
20 the courtroom. And that's why the rules are different.  
21 And you say to yourselves, well, I sure wish I could  
22 hear both sides of the story. It has nothing to do with  
23 both sides of the story. What you're really saying is,  
24 I want my comfort zone broader; because it's the State's  
25 job to prove somebody's guilty, and they have to prove  
it beyond a reasonable doubt.

26

In some hypothetical case it may very well

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1 it's not their job to prove that the defendant's not  
2 guilty. It's the State's job, through the quality of  
3 their evidence, to prove beyond a reasonable doubt that  
4 the defendant is guilty.

5

6 So, maybe the defense presents no  
7 witnesses. Maybe it will be another imaginary case that  
8 the defense will present witnesses, but not the  
9 defendant. Nothing in the world wrong with that. It  
10 may very well be in a third imaginary case that the  
11 defense presents witnesses and presents the defendant.

12

13 Let's talk about what happens if a  
14 defendant does testify. First off, if a defendant in a  
15 criminal case does testify in his or her own case, the  
16 first thing that happens is that the defendant does not  
17 get any extra credit for having testified. They don't  
18 get any extra points for having done something that the  
19 law doesn't obligate them to do. They can't be  
20 compelled to testify. They don't have to testify. If  
21 they do testify, that's voluntary and they don't get any  
22 extra credit for it.

23

24 Next, we know all defendants are presumed  
25 to be innocent, start the trial off not guilty. The  
presumption of innocence never ever, ever spills over to  
become a presumption that the defendant, as a witness,  
will tell the truth. There is not a single human being

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1 be that you only hear from the State's witnesses. Just  
2 because you only hear from the State's witnesses does  
3 not mean there is a requirement that you have to believe  
4 the State's witnesses. So hearing from only one side  
5 has absolutely nothing to do with what your verdict is  
6 going to be. Hearing from only one side and then  
7 determining whether you do or do not believe that side,  
8 that's what makes a difference as to what your verdict  
9 is going to be.

10

11 It's just like when you go out trying to  
12 buy a car, or trying to buy something, anything. If you  
13 only talk to one salesman because you chose to only talk  
14 to one of them doesn't mean that you're required to  
15 believe what that one says. It's just the same in here.  
16 Because you only hear from one side doesn't mean you  
17 have to believe it. Maybe you do. Maybe you will wind  
18 up a believer, but you don't have to.

19

20 In the case of a trial such as this, at  
21 the conclusion of the State's case -- that is to say,  
22 when they have presented all the witnesses that they  
23 intend to present -- they're going to rest. When the  
24 State rests, one of two -- one of three things can  
25 happen. It may very well be that the defense rests  
right behind them, presents absolutely no evidence  
whatsoever. Well, we know they don't have to, because

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1 alive on the face of this earth that is presumed to be a  
2 truth teller under oath before they ever testify. So,  
3 that's what happens when a defendant does testify. You  
4 take him or her, whatever the gender of the defendant is  
5 on trial -- in this case it's a male. You take that  
6 person as a witness. You evaluate them. You critique  
7 them just like you did all the other witnesses in the  
8 case, and you decide for yourself whether you do or  
9 whether you do not believe them. That's your deal.

10

11 On the other hand, if at the conclusion of  
12 a trial if a defendant does not testify, I will tell you  
13 in the Court's charge and I will tell you right now that  
14 that is not a circumstance -- that is to say, if a  
15 defendant does not testify in his or her case, that is  
16 not a circumstance that any jury can use to infer, to  
17 insinuate, or to speculate that the defendant on trial  
18 is, in fact, guilty.

19

20 It's just like -- and I've used this  
21 example till I'm sick of it. There was a brief time in  
22 my life that teenagers -- there were five boys in the  
23 family, and all five were teenagers at the same time.  
24 And we ate like horses. And at 6:00 o'clock at night  
25 when mom would bring in the platter, the meat platter,  
there would be seven pieces of meat on it; mom, dad, and  
five boys. The fastest four, which usually came from

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1 the oldest, got the best piece of meat. When the meat  
2 platter was empty, there wasn't a soul sitting around  
3 that table that ever thought that mom was going to take  
4 it back out to the kitchen and load it back up again.  
5 We did with what we had.

6 And it's the same way in a courtroom.  
7 When the evidence is all over with, that's all you're  
8 going to get. Now if it's enough to persuade you beyond  
9 a reasonable doubt that the defendant is guilty, it is  
10 your obligation to find him guilty. If it is not enough  
11 to persuade you beyond a reasonable doubt of the  
12 defendant's guilt, your obligation is to find him not  
13 guilty. But when a case is over with, and if you  
14 haven't heard from somebody that you wanted to hear  
15 from, if you haven't heard a specific piece of testimony  
16 or evidence that you wanted to hear, you've got to make  
17 your decision on the basis of what you do hear. You  
18 can't make it on the basis of, A, what you didn't hear,  
19 supply some secret information that you feel you might  
20 possess because you read it in a dime novel several  
21 years ago, and the butler does it. And everybody knows  
22 that butlers do nothing except serve food and kill  
23 people. You just do it on the basis of what you got.

24 The oath that you take as a juror is the  
25 very first event that occurs, is that you take an oath;

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1 and that oath will be that the verdict that you return  
2 in the case, whatever the verdict winds up being, will  
3 be based upon the evidence that you hear from the  
4 witness stand, as well as the law that you receive in  
5 the Court's charge, and not from any other source. So,  
6 if you feel in some imaginary case -- or if a juror  
7 feels in some imaginary case that, for example, there  
8 has been botched up investigative work, you can't pick  
9 up the slack for the investigators.

10 Because a juror's job is not to be a cop.  
11 Juror's job is not to be a lawyer. Juror's job is to  
12 decide the case on the basis of the information; that is  
13 to say, the evidence that the lawyers give to you. The  
14 lawyers' job is to provide you with information. Your  
15 job is to evaluate the information they provided you.  
16 If after you evaluate their information it's enough to  
17 find a person guilty beyond a reasonable doubt, do it.  
18 If it's not, find him not guilty. Any questions about  
19 that?

20 Okay. I want to spend just a couple of  
21 seconds with you talking about the capital punishment  
22 aspect of a trial, and then we're pretty close to being  
23 through. In the State of Texas, if a person is  
24 convicted of the offense of capital murder, there are  
25 only two possible punishments. One of those possible

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1 punishments is life. One of those possible punishments  
2 is death. In just a couple of minutes I'm going to ask  
3 you some questions about that.

4 Before I do, I want to talk to you just  
5 generally so you'll have a feel or a sense of how it's  
6 determined at the conclusion of a trial whether a life  
7 sentence is imposed or a death sentence is imposed. If  
8 a jury finds a defendant guilty of the offense of  
9 capital murder, we talked earlier about the fact that we  
10 come back and we have some more testimony that relates  
11 to the character, the background, the personal, moral --  
12 personal involvement, I should say, personal  
13 responsibility of the defendant on trial for the  
14 commission of a crime. I say that aspect because if you  
15 have, say, three or four people involved in a capital  
16 murder, maybe not all of them will have had equal  
17 involvement. Maybe some of them, a jury might view to  
18 be less involved. So, that aspect comes into play, or  
19 can come into play, at the second phase of the capital  
20 murder trial.

21 But at the conclusion of all of the  
22 evidence at the second phase of a capital murder trial,  
23 a jury is going to be asked to answer two questions.  
24 Sometimes we call them Special Issues; but they're two  
25 questions, and they're over here on this board. And if

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1 you can't see them I understand, because we can't do  
2 this in such a way that everybody here can see it; and  
3 it's not important that you know specifically the  
4 details of it, because we'll talk more about it later.  
5 But I want to give you a feel for how it's decided.

6 If a jury finds the defendant guilty of  
7 capital murder, comes back for the second phase of the  
8 trial, have the testimony, both sides rest, Court's  
9 charge is read to you, lawyers argue their case to you,  
10 and you go back to deliberate the question of  
11 punishment. That is to say, what answers are you going  
12 to give to those two questions?

13 The first question you're going to be  
14 asked to answer is this: Do you find from the evidence  
15 beyond a reasonable doubt that there is a probability  
16 that the defendant on trial would commit criminal acts  
17 of violence that would constitute a continuing threat to  
18 society? Now, no matter who the defendant is on trial,  
19 no matter what the evidence was in the case, no matter  
20 who the victim was in the case, there's never ever, ever  
21 going to be but two possible answers to that question;  
22 either yes or no. Answer it whichever way the evidence  
23 leads you.

24 Question Number Two, we'll ask you this:  
25 Taking into consideration all of the evidence, including

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1 the circumstances of the offense. That's going to be  
2 what you heard the first half of the trial. Also,  
3 including the character, the background, and the  
4 personal moral culpability or responsibility. That's  
5 going to be what you heard at the second part of the  
6 trial.

7 So, the first half of the second question  
8 simply instructs the jury to go back over all of the  
9 evidence in the case and ask yourselves this: Is there  
10 a sufficient mitigating circumstance, or perhaps  
11 circumstances, that make you believe in this particular  
12 case a life sentence would be more appropriate verdict  
13 than a death sentence? Again, no matter who the  
14 defendant, no matter who the victim, no matter what the  
15 testimony, no matter what the injuries, there's never  
16 ever, ever, ever but two possible answers to that  
17 question; either yes or no. And again, answer it  
18 however you view the evidence in the case.

19 If the jury answers that -- excuse me --  
20 those questions will always be asked that way. They  
21 will always contain those words, and they will always be  
22 in that order. If the jury should answer the first  
23 question yes and if the jury should answer the second  
24 question no, that is to say a yes answer and a no  
25 answer, in that order, then the law says that I have no

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1 choice, I have no option, I have no discretion. I must  
2 sentence the defendant to death. And that's exactly  
3 what I'll do.

4 On the other hand, if the jury should  
5 answer those two questions in any other way other than  
6 yes and no, in that order, that is to say, a no answer  
7 to the first question or a yes answer to the first one  
8 and yes answer to the second question -- if those  
9 questions are answered in any way other than yes or no,  
10 in that order, the law again says I have no choice, I  
11 have no option, and I have no discretion. I must  
12 sentence the defendant to life. And that's exactly what  
13 I'll do.

14 So, first off what you can see is that, A,  
15 the State of Texas never sentences somebody to death.  
16 And in a capital murder case, they never sentence  
17 somebody to life. What they do is they answer those two  
18 questions based upon the uniqueness of whatever the  
19 testimony was in that particular case. Now, you are  
20 entitled to know what the results of your answers is  
21 going to cost; that is to say, a yes and a no is a  
22 death. Anything else is a life.

23 But a jury does not go back and  
24 subjectively say, well, I just think in this case what  
25 we ought to do is give this one life, and I think in

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1 that case we ought to give that one death. We don't do  
2 it that way. The questions are standardized. They  
3 never change. Sometimes -- I know that you've seen or  
4 heard about results of capital murder trials wherein a  
5 life sentence was the result. Sometimes you've seen or  
6 heard of capital murders, at the conclusion a death  
7 sentence was the result. And in each of those cases,  
8 even though they're remarkably different results or  
9 outcomes, they may very well be the absolutely most  
10 appropriate result for that particular case.

11 Because the things that are always  
12 different in a trial are the defendants are always  
13 different. Their backgrounds are always different. Who  
14 they are is always different. A victim in a case is  
15 always different. Who they are is always different.  
16 Their backgrounds are always different. The crimes are  
17 always different. Nothing is ever the same. And in  
18 every single case, every single case, all twelve of the  
19 jurors are always different from the next twelve, from  
20 the next twelve, and from the next twelve. And we could  
21 have four jurors, and we could fit them into this  
22 courtroom for -- four juries, I should say. If we could  
23 fit them into this courtroom, listening to exactly the  
24 same testimony from exactly the same people at exactly  
25 the same time, and have all four of them go out into

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1 different jury rooms and deliberate, you can come up  
2 with four exactly different verdicts.

3 So, that's why every single criminal trial  
4 is as unique as a fingerprint. Not another one will  
5 ever be the same because of the difference of the  
6 parties, because of the difference of the circumstances,  
7 and because of the difference in the juries. So all I'm  
8 trying to point out is the questions. The law never  
9 changes. What makes verdicts appropriate is that the  
10 facts always change and the combination of facts.

11 So I go back to what I said earlier, that  
12 in this case there are two possible punishments, life or  
13 death. Since the death penalty is a possible  
14 punishment, I'm going to ask you a question. Before I  
15 ask it, I'm going to tell you the question, what it is  
16 I'm going to ask. Thereafter, I'm going to explain the  
17 question that I'm going to ask. And then I'm going to  
18 ask you the question for real. So, don't answer the  
19 question till I ask it for real, because I'm going to  
20 try to explain it without confusing it. And I'm  
21 perfectly capable of confusing it.

22 Assume with me that you're a juror in some  
23 imaginary capital murder case. The jury's found the  
24 defendant guilty of capital murder. Whatever the  
25 evidence was makes no difference. That's the result.



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1 You come back to the second phase of this capital murder  
2 trial, and you hear additional evidence. And let's just  
3 say that after having heard all the evidence in the case  
4 that you believed that those two questions we talked  
5 about should be answered yes and no, in that order,  
6 meaning that the death penalty would be imposed.

7 My question is this: It's going to be  
8 this: Is there anybody here who has such a firm  
9 opinion, whether it be -- whether it be a conscientious,  
10 a religious, a moral, or a philosophical opinion against  
11 the consideration of death as a punishment in a criminal  
12 case that that opinion would override your ability to  
13 evaluate the testimony in the case and cause you,  
14 therefore, to answer those questions in such a way that  
15 a life sentence would be imposed?

16 So, the explanation of the question is  
17 simply this: We are never, never, never going to get  
18 into what the testimony or the evidence is going to show  
19 in a particular case. That has to come from the  
20 witnesses. But let's just say for the purposes of this  
21 conversation there is -- let me ask you this: Is there  
22 anybody here who never, ever, no matter what the  
23 circumstances, no matter what the testimony, no matter  
24 who the victims, no matter who the defendant, never  
25 ever, under any set of circumstances, no matter what it

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1 is, would ever answer those two questions in such a way  
2 that the death penalty would be imposed, even though  
3 they knew the imposition of the death penalty would be  
4 the right result in the case?

5 Now, that's the explanation. Now I'm  
6 going to ask the question. Is there anybody here who  
7 has a feeling that is so strong, a feeling of  
8 conscience, a feeling of religion, a moral feeling, a  
9 philosophical feeling, that would override and interfere  
10 with their ability to objectively answer those two  
11 questions and, if the evidence called for it  
12 intellectually, vote in such a way that the questions  
13 would be answered, the death penalty would be imposed;  
14 and as a result, your strong feelings would overcome  
15 your ability to do that and prevent you from doing it,  
16 no matter what the evidence, no matter what the  
17 testimony, and no matter what the case. The front half  
18 of the first row? Anybody there? I see no hands.

19 VENIREPERSON: You asked the question.  
20 You said --

21 THE COURT: Yeah, go ahead.

22 THE JUROR: You said it makes no  
23 difference what the person -- I think I'm understanding  
24 you to say, what my belief is --

25 THE COURT: Is that --

45

1 VENIREPERSON: -- the question -- or it  
2 wouldn't make no difference what my belief is, that the  
3 question is going to override.

4 THE COURT: If you did have a belief  
5 against the imposition or the consideration of death as  
6 a punishment, is there any set of circumstances, any set  
7 of facts, any defendant, any innocent victim, that the  
8 combination of those things would rise to the level that  
9 would cause you to set your feelings aside and consider  
10 the death penalty as an appropriate punishment? What's  
11 the answer to my question?

12 VENIREPERSON: I'm opposed to the death  
13 penalty, and it's because of religion.

14 THE COURT: That's not my question. My  
15 question to you is, is there any set of circumstances  
16 that you can dream up -- and I don't want you to tell me  
17 what they might be; a bombing of a schoolhouse. I  
18 simply don't care. Is there any set of circumstances  
19 that if, after you heard them, might rise to the level  
20 that would cause you to put your opposition aside and  
21 consider death as a possible punishment? I'm not asking  
22 you about this case. I'm just saying, is there  
23 something out there where you could consider that?  
24 Anybody on the first row? First left?

25 Yes, ma'am, and your number is?

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1 VENIREPERSON: 31.

2 THE COURT: Yes, ma'am. And next -- was  
3 there somebody else?

4 Yes, ma'am?

5 VENIREPERSON: 34.

6 THE COURT: All right.

7 VENIREPERSON: All of a sudden, I'm  
8 confused about the question. The question is --

9 THE COURT: I can do that.

10 VENIREPERSON: Sorry. The question is if  
11 I would raise my hand if I believed there was a  
12 circumstance --

13 THE COURT: The question is this: Is  
14 there anybody here -- I guess it really should be a  
15 two-part question. Is there anybody here who is opposed  
16 to the death penalty? Now if you are, that's a deal.  
17 But does that opposition rise to the level that no  
18 matter what the evidence was in a case, you could never  
19 consider it? Because some cases get so bad that the  
20 objection to the death penalty dwindles by comparison.  
21 And I'm simply asking: Could you consider answering  
22 these questions in such a way that the death penalty is  
23 imposed, depending upon the circumstance of the case?  
24 Anybody else?

25 VENIREPERSON: The question that you're

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1 asking us is not whether or not we believe in the death  
2 penalty, but whether or not in a given circumstance we  
3 could let our belief overrule that and vote for the  
4 death penalty?

5 THE COURT: Exactly.

6 VENIREPERSON: Okay.

7 THE COURT: Thank you. I should have used  
8 you a whole lot earlier. And also along those lines,  
9 not what would you do in this case? Don't ever --  
10 because you don't have any idea what you would do in  
11 this case. Just simply the idea is, are you available  
12 to both possible punishments? Whichever one you select,  
13 would you please select it on the basis of the evidence  
14 in the case, not because of your moral or  
15 philosophical -- yes, ma'am?

16 VENIREPERSON: Now my other question is:  
17 Are you going to ask the second half of that, which is  
18 could we vote -- could we not vote for the death penalty  
19 under any circumstances, or is that all in one?

20 THE COURT: You've been asked -- I'm not  
21 going to ask that; because if there are only two  
22 possible punishments, then there is only one other  
23 alternative, and that's a life sentence.

24 Yes, ma'am?

25 VENIREPERSON: No. I'm holding my hands

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1 row? Anybody there? Nobody there? Front row of the  
2 jury box? Anybody? I see no hands. Second row of the  
3 jury box? Anybody?

4 Your number, please?

5 VENIREPERSON: (Inaudible.)

6 THE COURT: Thank you. We talked awhile  
7 ago about the schedule. We know that we're going to do  
8 one of the days this week for those of you who come  
9 back. We know that we're going to make the final jury  
10 pool together on the 29th of September, which is a  
11 Wednesday, two weeks from this coming Wednesday. We  
12 know the testimony in the case is going to begin October  
13 the 4th. Going back to what I said earlier, that we  
14 recognize everybody here is, to some degree or another,  
15 laboring under an inconvenience. But we have already  
16 talked about those problems, and what I want to do is  
17 address this situation. Is there anybody here for whom  
18 one of the days this week, the 29th of September, and  
19 more than one work week, October the 4th, but not as  
20 much as two work weeks. So that would mean the week of  
21 October 4th and October the 11th. Is there anybody for  
22 whom that time frame is an absolute impossibility to fit  
23 us into your life?

24 I'll get to you. If I jump around, I'll  
25 miss somebody; and I don't want to do that. Front left

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1 up.

2 THE COURT: We've been talking so long, if  
3 I ever knew your number, I don't know -- I don't  
4 remember. And your number is what?

5 VENIREPERSON: 39.

6 THE COURT: Thank you very much.

7 VENIREPERSON: I have to ask this: We  
8 raise our hand if we --

9 THE COURT: Tell me if you would refuse to  
10 answer those two questions on the basis of the evidence,  
11 ignoring what result your answers to those questions  
12 would cause.

13 VENIREPERSON: I wouldn't refuse on the  
14 basis of the evidence.

15 THE COURT: Okay. So --

16 VENIREPERSON: So, I don't raise my hand.  
17 Okay.

18 THE COURT: Well, all right. Anybody else  
19 on the front row? Okay. Second row, on the left? I  
20 see no hands on the second row on the left. Second row,  
21 on the right? I see no hands. Third row, on the left?

22 Yes, ma'am, and your number, please?

23 VENIREPERSON: 57.

24 THE COURT: 57. Thank you. Anybody else?  
25 Third row on the right? Nobody there. Along the back

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1 row, is there anybody for whom that is an impossibility?

2 Yes, ma'am, and you are 31?

3 VENIREPERSON: 31.

4 THE COURT: Anybody else in that front row  
5 left? Nobody else. Front row right? Yes, sir, your  
6 number?

7 VENIREPERSON: 40.

8 THE COURT: 40. And what is your  
9 circumstance, please, sir?

10 VENIREPERSON: I have purchased  
11 nonrefundable airfare for a vacation and paid for other  
12 arrangements.

13 THE COURT: What are those dates, please?

14 VENIREPERSON: The 25th through the 2nd.

15 THE COURT: Of September?

16 VENIREPERSON: Yes.

17 THE COURT: Okay. Thank you. Anybody  
18 else on that front row? Nobody? Second row, left side?  
19 Anybody? Yes, ma'am?

20 THE JUROR: I don't know whether this is  
21 proper, but I have night classes. Will it affect the  
22 night and evening?

23 THE COURT: No. And in a simple way for  
24 all of you, if this is an issue to anybody, trust me.  
25 All of us inside this rail here, we've all got lives,



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1 too; and we don't spend nights down here. You just see  
2 that on television. Not a problem. Second row, right?  
3 Yes, sir?

4 VENIREPERSON: I'm on an Exxon mobile  
5 transition team, which is planning personnel --

6 THE COURT: I'm sorry. What is your  
7 number, please?

8 VENIREPERSON: 49.

9 THE COURT: All right.

10 VENIREPERSON: And we're planning  
11 personnel moves. The merger is expected to be approved  
12 by the end of this month, and we're going to actually be  
13 moving employees around, notifying --

14 THE COURT: All right. I have no idea  
15 what will come of that. Thank you. Anybody else? Yes,  
16 sir?

17 VENIREPERSON: I just have a question.

18 THE COURT: Please.

19 VENIREPERSON: Will this last beyond  
20 October 13th? I have nonrefundable tickets.

21 THE COURT: October 13th is a Wednesday,  
22 is it not? I can't guarantee you that it won't, but  
23 thank you. If it doesn't, you can't play. What's your  
24 number?

25 VENIREPERSON: 51.

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1 THE COURT: Okay. Thank you. Yes, sir?

2 VENIREPERSON: Juror Number 53. I've got  
3 a question.

4 THE COURT: Yes, sir.

5 VENIREPERSON: You said possibly we might  
6 have to come back next Monday or Tuesday?

7 THE COURT: No, sir.

8 VENIREPERSON: No, sir?

9 THE COURT: Yes, sir.

10 VENIREPERSON: I'm 54.

11 THE COURT: Uh-huh.

12 VENIREPERSON: I'm involved in a couple of  
13 projects right now that requires my attention. I need  
14 to be there.

15 THE COURT: I'm sure that applies to a lot  
16 of folks. Thank you. Third row, left? Yes, sir?

17 VENIREPERSON: Number 59. I have my own  
18 auto repair business. I am the only man.

19 THE COURT: We'll get back to you. Thank  
20 you. Third row, right? Yes, sir? Yes, sir?

21 VENIREPERSON: I have a baby due October  
22 1st.

23 THE COURT: All right. What's your  
24 number?

25 VENIREPERSON: 61.

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1 THE COURT: Thank you. Yes, sir?

2 VENIREPERSON: 63, same circumstance. Due  
3 date is October 10th; but it will probably be before  
4 that, hopefully.

5 THE COURT: All right. Thank you. Yes,  
6 ma'am?

7 VENIREPERSON: I have nonrefundable plane  
8 tickets to be out of town the 17th.

9 THE COURT: The 17th of?

10 VENIREPERSON: A week will be Friday, all  
11 the next week of September.

12 THE COURT: The 17th you leave, and you'll  
13 be back?

14 VENIREPERSON: 22nd.

15 THE COURT: Piece of cake. Thank you.

16 Number 66. The whole back row?

17 VENIREPERSON: I have a question.

18 THE COURT: Yes, ma'am?

19 VENIREPERSON: It may seem silly; but I'm  
20 an educator, and I'd be away from my classroom that  
21 amount of time.

22 THE COURT: We'll do the best we can to  
23 sort that out. Thank you. Front row, jury box?

24 Nobody? Second row, jury box? Yes, ma'am?

25 VENIREPERSON: I have airfare tickets

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1 tomorrow.

2 THE COURT: Your number?

3 THE VENIREPERSON: 85.

4 THE COURT: Okay.

5 VENIREPERSON: I'm leaving on a conference  
6 with my husband. I'll be gone all the rest of this  
7 week. But the main problem I have is I talked to -- I  
8 own a bed and breakfast in Bryan, Texas; and I talked to  
9 my manager this morning. She's been interviewing for a  
10 job up in Dallas and effectively has the job, and which  
11 she's said a two-week notice. And I'm the only person  
12 left to run it, so --

13 THE COURT: Yes, ma'am.

14 THE VENIREPERSON: 87. We have a wedding  
15 in New Orleans.

16 THE COURT: Okay. Thank you. Yes, sir?

17 VENIREPERSON: Number 90. I'm a medical  
18 resident intern, so I'm medical education.

19 THE COURT: Thank you. Okay. Let me tell  
20 you folks what's going to happen next. That will be  
21 before I tell them --

22 Have I left anything out, folks? Mr.  
23 McClellan? Mr. Hill?

24 MR. HILL: No, Your Honor.

25 THE COURT: Next thing that's going to

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1 happen is the lawyers and I are going to visit for a  
2 second for the purposes of determining who is going to  
3 come back. Nobody expects you to sit here in stone  
4 silence while we do this, because it's going to take  
5 maybe ten minutes. I don't know if you have ever been  
6 in a crowded room where you were trying to tell a nice,  
7 juicy piece of gossip to friends of yours, and you have  
8 to talk loudly enough so the friends could hear it over  
9 the noise in the room, but still low enough so nobody  
10 else could hear. And just when you told the punch line  
11 to the big old juicy piece of gossip, the crowd stopped  
12 talking and everybody heard every single thing you said.  
13 That's happened to me, and it's most embarrassing.

14 I guess what I'm saying to you is this: I  
15 don't care how loud y'all get while we're doing this;  
16 but however loud you get, always stay that loud. And  
17 in about ten minutes, we'll be right back with you.  
18 Before I start, does anybody have any questions?

19 VENIREPERSON: Do we leave to go to the  
20 restroom?

21 THE COURT: No, ma'am. If -- and I hate  
22 to use the word urgent, because I used to do that to my  
23 kids. If you have to go, do it; because we'd rather  
24 have you more comfortable than not. But please come  
25 back as quickly as possible. And I don't know where to

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1 go up here.

2 (Off-the-record discussion.)

3 (At the bench:)

4 THE COURT: All right. It's my  
5 understanding there is an agreement by and between the  
6 parties that the following 33 venirepersons from the  
7 pool, which includes Number 31 through Number 90, for  
8 various agreements may each be excused. Those numbers  
9 to be excused are 31, 32, 34, 35, 39, 41, 45, 46, 47,  
10 51, 54, 55, 57, 58, 59, 60, 61, 64, 66, 67, 68, 71, 73,  
11 75, 76, 79, 80, 82, 88, 85, 6, and 7, 89.

12 Mr. McClellan, is that your agreement?

13 MR. MCCLELLAN: Yes, Your Honor.

14 THE COURT: Miss Connors?

15 MS. CONNORS: Yes, Your Honor.

16 THE COURT: Mr. Hill?

17 MR. HILL: Yes, Your Honor.

18 THE COURT: Mr. Wentz?

19 MR. WENTZ: Yes, Your Honor.

20 THE DEFENDANT: Yes, Your Honor.

21 THE COURT: Sir, you specifically  
22 requested each of those people be excused?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Okay, ladies and gentlemen,  
25 out of the sixty folks here, the attorneys have agreed

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1 to invite back 27 people. And what we're going to do is  
2 we're going to bring you back eight on Tuesday, eight on  
3 Wednesday, eight on Thursday, and the final three on  
4 Friday. We're going to do our business here, right here  
5 in this courtroom. I'm going to ask all of you who are  
6 coming back to please be here by 8:30 in the morning.

7 Now every day, whatever day you're  
8 supposed to be back, we're always going to start that  
9 day. I can't possibly keep my word to you about when I  
10 can get you out of here if you can't let me get started  
11 on time. If I can get started on time, I'll have you  
12 out of here; but if I can't start on time, then we all  
13 just have to wait.

14 Let me tell you something else that's  
15 unique. Our law requires that we speak with you in the  
16 same order in which you were sent to us today; meaning,  
17 that, for example, if on Thursday, if you're the first  
18 person that we're scheduled to talk to you and if you're  
19 supposed to be here at 8:30 and if you don't show up  
20 until 9:15, I want you to know why you have so many  
21 people so angry with you. Now once we've concluded  
22 talking with you on an individual basis, you're through.  
23 We're not going to hold you hostage until we're through  
24 with everybody. But we do have to talk now the way in  
25 which we got you, and we can't do that until you're all

58

1 here.

2 Now I'm going to call your names out and  
3 your numbers as to who is supposed to be back. It's  
4 always going to be right here. It's always going to be  
5 by 8:30 in the morning. It's going to be either  
6 Tuesday, Wednesday, Thursday, or Friday. Now please  
7 keep in mind how long it took you to get through the  
8 gunculator, or whatever that thing is called downstairs  
9 that checks for weapons and so forth. Please factor  
10 that in, because it's crowded in the morning. Also,  
11 where you park, that's your call. If you parked today  
12 over in the jury assembly room because that's a place  
13 you are familiar with from having done that on Friday,  
14 that's your call. But please factor all that in in such  
15 a way that you know you can be here by 8:30.

16 Let me tell you something else. There's  
17 never going to be a day when we don't talk to you. Not  
18 going to happen. If we have to order from the hospital  
19 six sets of I.V. fluids to lay here on gurney tables and  
20 talk to you, we're going to get to talk to you. You're  
21 never going to make two days trip back for this purpose.  
22 It's just not going to happen, because that gets into  
23 the wasting your time business.

24 Now having said that, let's talk about the  
25 eight people who are due back tomorrow morning by 8:30.

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1 I'm sorry. Before I do this, one more thing. Let me  
2 say, I'm going to make the attempt to do this  
3 chronologically. There is nobody here who has Number  
4 120, so that's why I'm going to use that number. If  
5 your number is 120, and if I call that number to be back  
6 here on a certain day, and if the next number I call is  
7 123, that means 121 and Number 122 don't need to worry  
8 about coming back unless I mess this up somehow. And  
9 I'm capable of that. But I'm not going to jump around  
10 and just all over the place. I'm going to try and do  
11 this as orderly as I possibly can.

12 So with that in mind, tomorrow morning by  
13 8:30, the following eight people: Lynne Cantrell,  
14 Number 33; Katherine Stephens, Number 36; Demetta  
15 Landry, Number 37; Katherine Waller, Number 38; Number  
16 40, Ross Smith; Number 42, Michael Evans; Number 43,  
17 Michele Beasley; and Number 44, Cecelia Fine. Each of  
18 those eight people due back tomorrow, Tuesday morning by  
19 8:30. Of you eight folks whose name I called, do any of  
20 you have any questions from me?

21 Okay. The next eight names I'm going to  
22 call are folks for Wednesday morning again. Same place,  
23 right out here in the hallway; same time, by 8:30.  
24 These eight people are first off. Number 48, Vera  
25 Garcia; Number 49, James Pryor; Number 50, Rose Turner;

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1 Number 52, Thomas Smith; Number 53, Donald Nelson;  
2 Number 56, Douglas Polega; Number 62, -- and I'm sorry.  
3 I can't read the Xeroxing. Is it Eric Garcia? And  
4 Number 63, Richard Ardoin. Those eight people be back  
5 Wednesday morning by 8:30. Did any of you eight folks  
6 have any questions for me about when you're supposed to  
7 be back or who is supposed to be back?

8 Okay. The following eight people will be  
9 Thursday morning. Same location, right out here by the  
10 door; same time, by 8:30. Those eight people are first  
11 off: Number 65, Steven Wiedmann; Number 69, Margarita  
12 Byrum; Number 70, Lori McGarity; Number 72, Zenobia  
13 Prince; Number 74, Anna Haydock; Number 77, Suzette  
14 Barr; Number 78, Gilbert Cantu; and Number 81, Gregory  
15 Adams. Those eight folks Thursday morning by 8:30.

16 The last three people Friday morning; same  
17 place, same time, by 8:30. They are Number 83, Charles  
18 Gilbert; Number 84, Elyse Sony; and Number 88, Stacie  
19 Cokinos? What would be closer?

20 VENIREPERSON: Cokinos.

21 THE COURT: Those three folks Friday  
22 morning 8:30.

23 Now, first off, if you didn't hear your  
24 name called and your number called, I'll bet you're  
25 pretty pleased. Those of you who do come back, we're

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1 going to attempt to make you even happier than those  
2 we're not bringing back. Do any of you have any  
3 questions at all for me?

4 Yes, sir?

5 VENIREPERSON: When will we find out  
6 whether we will be selected?

7 THE COURT: Thank you. At the conclusion  
8 of our individual conversations, everybody will leave  
9 here knowing whether they are to be back on the 29th of  
10 September; or if they're not -- if you're not to be back  
11 on the 29th of September, your jury service will have  
12 concluded; and I'll tell you that right there on the  
13 spot.

14 If you are to be back on the 29th, we're  
15 going to start at 9:30, and we ought to be through by  
16 noon. And on the 29th of September, with the whole  
17 panel the whole pool of everybody, everybody will leave  
18 here that day knowing definitely whether they are or are  
19 not a juror in the case. So we're just taking different  
20 phases as we go through the process. But if, after your  
21 individual conversation, which I guess if you're coming  
22 back would be tomorrow; is that correct? You'll know  
23 when you leave here tomorrow whether you're still in the  
24 deal or not. But I will not have the capacity, nor will  
25 anybody here have the ability, to project tomorrow what

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1 your status might be on the 29th of September. Anybody  
2 else have any questions?

3 Okay. In just a second Alice, our clerk,  
4 is going to have some excuses for you, hall passes, or  
5 whatever you want to call them, documents to take for  
6 anybody that has a real, real interest in knowing where  
7 you were yesterday and today. First thing we're going  
8 to do is get these to those of you who are not coming  
9 back, because we won't see you again. Those of you who  
10 are coming back, if you have to have one between now and  
11 when we see you again, Alice will get that for you. And  
12 we'll have it before you leave; but if you don't need  
13 one, what we will do is give you one for the date you're  
14 due back, add to it Friday when you were here, add to it  
15 today when you were here to make it all three days at  
16 once. If you can live that way, that would be easier  
17 for us. If you can't, we're not going to punish you  
18 because we've got to do it. Anybody have any questions?

19 Okay. When you get whatever stuff you  
20 need, then you are excused. And to all of you, thank  
21 you very much, very, very much. And we look forward to  
22 seeing you after a bit.

23

24

25

1 THE STATE OF TEXAS )

2 COUNTY OF HARRIS )

3 I, Pamela Kay Knobloch, Official/Deputy  
4 Official Court Reporter in and for the 179th District  
5 Court of Harris County, State of Texas, do hereby certify  
6 that the above and foregoing contains a true and correct  
7 transcription of all portions of evidence and other  
8 proceedings requested in writing by counsel for the  
9 parties to be included in this volume of the Reporter's  
10 Record, in the above-styled and numbered cause, all of  
11 which occurred in open court or in chambers and were  
12 reported by me.

13 I further certify that this Reporter's Record  
14 of the proceedings truly and correctly reflects the  
15 exhibits, if any, admitted by the respective parties.

16 I further certify that the total cost for the  
17 preparation of this Reporter's Record is \$\_\_\_\_\_ and  
18 was paid by Harris County.

19 WITNESS MY OFFICIAL HAND this the \_\_\_\_ day of  
20 \_\_\_\_\_, 2000.

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REPORTER'S RECORD

VOLUME 7 OF 25 VOLUMES

TRIAL COURT CAUSE NO. 800112

CHARLES MAMOU, JR. ) IN THE DISTRICT COURT  
Appellant )  
VS. ) HARRIS COUNTY, TEXAS  
THE STATE OF TEXAS )  
Appellee ) 179TH JUDICIAL DISTRICT

\*\*\*\*\*

VOIR DIRE EXAMINATION

\*\*\*\*\*

On the 14th day of September, 1999, the following  
proceedings came on to be heard in the above-entitled  
and numbered cause before the Honorable Bob Burdette,  
Judge Presiding, held in Houston, Harris County, Texas:  
Proceedings reported by computer aided  
transcription/stenograph machine.

2

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3

1 (Prospective jurors brought in as a  
2 group.)

3 THE COURT: Good morning, ladies and  
4 gentlemen. I want to spend some time before we start  
5 visiting individually, talking about a few things that  
6 we didn't talk about yesterday. And we didn't talk  
7 about them yesterday for a reason, and the reason was  
8 that our crowd was so big we could have made absolutely  
9 no headway with any of this stuff.

10 Before we begin, let me say, my best guess  
11 is that we're going to be talking about some things that  
12 you have never in your life given any thought to, nor is  
13 there any reason whatsoever that you should have. You  
14 might find it a little bit peculiar as compared to your  
15 work at your job and your ordinary routine. But please,  
16 don't get frustrated with what we're talking about,  
17 because all we're going to do is talk about the rules  
18 that can come into play during the course of a trial  
19 like this.

20 Whether these rules do come into play  
21 depend upon the testimony presented in the case. But  
22 we're going to talk about things that can happen. It is  
23 not going to be necessary for you to try to memorize  
24 what it is we're talking about. Because if these rules  
25 do come into play, these rules are all going to be given

4

1 to you in writing. They're going to be in the Court's  
2 charge. You will have the Court's charge and these  
3 rules with you during the entire time that you're  
4 deliberating, so don't worry about trying to memorize  
5 it.

6 I just want to give you an idea of what  
7 you might anticipate. The ultimate question is going to  
8 be: Is there anything about any of these rules that  
9 causes you to feel that you would refuse to follow them  
10 if you were a juror in the case? So, with that in mind,  
11 let's start off. We talked yesterday about the fact  
12 that this defendant, Mr. Mamou, is charged with the  
13 offense of capital murder. His attorney, Mr. Wayne  
14 Hill, is present in the courtroom. Mr. Kurt Wentz, his  
15 other attorney, has had to step out for a minute. State  
16 of Texas is represented by two of her Assistant District  
17 Attorneys, Mr. Lyn McClellan and Miss Claire Connors.

18 We talked about the fact that the  
19 defendant, Mr. Mamou, is indicted for the offense of  
20 capital murder. We also talked about the fact that if a  
21 person in the State of Texas is convicted of the offense  
22 of capital murder, there are two possible punishments  
23 that can be imposed. One of those possible punishments  
24 is a life sentence. One of those possible punishments  
25 is a death sentence. Whichever punishment is imposed

5

1 depends upon how a jury answers two questions that will  
2 be presented to you at the second phase of the trial.

3 We talked yesterday about the fact that at  
4 the first phase of the trial the burden of proving the  
5 defendant's guilt is on the State, and they must prove  
6 to a jury's satisfaction beyond a reasonable doubt that  
7 the allegations contained in the Grand Jury's indictment  
8 are, in fact, correct. If they do that, the jury's job  
9 is to find the defendant guilty. If they fail to do  
10 that, the jury's job is to find the defendant not  
11 guilty. But starting out at trial, the defendant is not  
12 guilty. And the defendant stays -- remains not guilty  
13 throughout the testimony in the case unless or until the  
14 testimony in the case proves to the jury beyond a  
15 reasonable doubt that, in fact, the defendant is not  
16 innocent. The defendant is, in fact, guilty.

17 Now we talked about the testimony at the  
18 first phase of the trial is going to focus on the  
19 offense that was committed; because that's going to be  
20 your decision that you have to make, is whether the  
21 defendant is guilty or not guilty. So the fact that the  
22 evidence at the first phase is going to be on the  
23 question of the crime -- Who did it? Where was it  
24 done? When was it done? How was it done? What was  
25 the relationship of the parties, if there was any? Why

6

1 was it done, if that information is known?

2 So at the second phase of the trial, if  
3 the defendant is found guilty, at the second phase the  
4 focus of the evidence is going to get off the crime that  
5 was committed, because you will have already heard all  
6 there is to hear about that; and instead, at the second  
7 phase of the trial the focus of the evidence is going to  
8 be on the character, the background of the defendant  
9 involved, so that you can take the background of the  
10 defendant, match it up with the crime that you would  
11 have found the defendant guilty of having committed, and  
12 come up with what you think is the right decision to  
13 reach, taking into account all those factors.

14 We talked about the two questions that are  
15 involved. They're over here on the board, and I want to  
16 spend some time talking with you about them. And  
17 certainly feel free to look at them as we're talking,  
18 because we're going to spend some time talking about the  
19 contents. The first question, we know, starts -- asks:  
20 Do you find from the evidence beyond a reasonable doubt  
21 that the defendant -- there is a probability that the  
22 defendant would commit criminal acts of violence that  
23 would constitute a continuing threat to society. We  
24 talked yesterday about the fact that no matter what the  
25 evidence, no matter who the defendant, no matter who the

7 victim, no matter who the jury, there's never but two  
8 possible answers to that question, either yes or no.

9 Question Number Two asks: Do you find  
10 from the evidence -- I'm sorry -- asks: Taking into  
11 consideration all of the evidence in the case, including  
12 the circumstances of the offense -- that's going to be  
13 the stuff that you heard at the first phase of the trial  
14 about the crime. Also, including the character and the  
15 background and the personal moral culpability -- same as  
16 responsibility. That's going to be what you hear at the  
17 second half of the trial.

18 So the first half of the second question  
19 simply is an instruction to the juries to go back over  
20 all of the evidence in the case for the purpose of  
21 asking yourself this question: Is there in this case a  
22 sufficient mitigating circumstance or circumstances that  
23 make me believe that a life sentence would be a more  
24 appropriate verdict than a death sentence? Again, no  
25 matter what the evidence, no matter who the defendant,  
no matter who the victim, only two possible answers, yes  
or no.

If you answer yes to the first question  
and if you answer no to the second one, I have no  
choice, I have no option, and I have no discretion. I  
must sentence the defendant to death, and that is

8 exactly what I'll do. If the jury should answer those  
9 questions in any way other than yes and no, that order,  
10 again, I have no choice, no option, no discretion. I  
11 must sentence the defendant to life.

12 So, we talked yesterday about the fact  
13 that the jury does not subjectively go out and say to  
14 themselves, well, in this case we think we'll give this  
15 one the death penalty. And in that case we'll give that  
16 one a life sentence. The jury doesn't sentence to life  
17 or sentence to death. The jury simply answers those two  
18 questions. But you are entitled to know what result  
19 your answers to those questions will cause. A yes and a  
20 no, in that order, is a death sentence. Anything else  
21 is a life sentence. Any questions so far?

22 Okay. Let's take the questions  
23 individually and then go through the contents of them.  
24 We talked yesterday about the fact that in the Court's  
25 charge there is going to be a number of things defined  
for you, a number of terms that are going to be defined  
for you. And we're going to find as we talk about these  
questions there is also going to be a number of them  
that are not going to be defined for you.

If you say to yourself, how in the world  
do you people decide what definitions you're going to  
give us, which ones you're not? The answer to that is

9 really pretty simple, and the answer is this: If we're  
10 going to be using a word that has some meaning that's  
11 peculiar to the lawyering business, we have no  
12 justifiable right to think that you ought to come here  
13 armed with knowing what that is; because it's not your  
14 job, so we're going to define that word for you. If,  
15 however, we're going to be using words of common usage  
16 that we all use all the time, we're not going to define  
17 those words.

18 First question. The first question starts  
19 off with a phrase, do you find from the evidence beyond  
20 a reasonable doubt -- we talked about the reasonable  
21 doubt business yesterday. We talked about the  
22 definition. We talked about it from the standpoint of  
23 that being the amount of proof that the State must  
24 present in order for a jury to be able to find a  
25 defendant guilty of the offense of capital murder, or  
any other criminal offense for that matter. It is  
exactly the same amount of proof that relates to the  
second -- to this first question at the second phase of  
the trial; because it starts off with the phrase, do you  
find from the evidence beyond a reasonable doubt --  
anytime we see that phrase, we know that that means the  
State has to prove to you what the answer should be by  
the quality of their testimony. The evidence must be

10 such that it excludes all reasonable doubt as to the  
11 defendant's guilt. Also excludes all reasonable doubt  
12 that the answer to that first question should be yes.

13 We talked about the presumption of being  
14 innocent at the first phase of the trial. We know that  
15 presumption can be eliminated by the quality of the  
16 evidence in the case. And if the quality of the  
17 evidence is such that it establishes a defendant's guilt  
18 beyond a reasonable doubt, obviously the presumption of  
19 innocence has gone away.

20 If a defendant is found guilty of capital  
21 murder, beginning at the second phase of the trial, a  
22 whole new presumption pops up to replace the presumption  
23 of innocence. And that whole new presumption is this:  
24 It is presumed that for every person convicted of the  
25 offense of capital murder, the appropriate punishment is  
life. Now, how in the world did I get there? Well,  
because that first question starts off with the phrase,  
do you find from the evidence beyond a reasonable doubt?  
Meaning, the State's got to prove to you what the answer  
to that question should be. If they don't prove to you  
what the answer to that question -- that the answer to  
that question should be yes, the answer to that question  
is no.

We understand from our conversation this

11 morning and yesterday that a no answer to the first  
 12 question is different than yes and no, in that order,  
 13 which is what it takes for a death sentence. So a no  
 14 answer to the first question means a life sentence, and  
 15 that's the way the question starts off being answered  
 16 unless the State's evidence proves beyond a reasonable  
 17 doubt that the question should be answered yes. Does  
 18 that make any sense? Okay. So, the State's job is to  
 19 prove beyond a reasonable doubt that the answer is yes  
 20 to that first question. If they don't, the answer is  
 21 no.

22 Do you find from the evidence beyond a  
 23 reasonable doubt that there is a probability? Let's  
 24 talk about the word "probability." This is a word  
 25 that's not going to be defined for you, because we use  
 that term all the time. I'm not permitted to give you a  
 definition for that word, but I am permitted to visit  
 with you about whatever the word probability does mean  
 to you. There are two things that it cannot mean. The  
 first thing that a probability cannot mean is that it  
 can't mean the same thing as a possibility. Anything  
 could possibly happen. Simply because it could possibly  
 happen does not mean it's probably going to, whatever  
 the word probability means to you. On the other hand,  
 it cannot mean something as great as a certainty.

12 Anything -- or simply just because something is probably  
 13 going to happen does not mean it's certain to happen.

14 And keep in mind the context within which  
 15 we're using this word probability and what it does. We  
 16 are requiring the State to prove beyond a reasonable  
 17 doubt the existence of future acts of violence. Can you  
 18 see how grossly unfair it would be to a defendant if all  
 19 the State was required to do was to prove the existence  
 20 of the possibility that a defendant on trial could  
 21 commit criminal acts of violence? That wouldn't be fair  
 22 to the defendant.

23 On the flip side, it wouldn't be fair to  
 24 the State if we required them to prove beyond a  
 25 reasonable doubt that there was a certainty that a  
 defendant would commit criminal acts of violence. So,  
 what we did was we split the baby. If probability means  
 to you something more likely to happen than likely not  
 to happen, that's a deal. We're now getting into  
 football season. Odds on a football game. Probability.  
 The greater the odds, the less the probability. The  
 weatherman, whenever he or she says twenty percent,  
 forty percent, all probabilities. And I don't mean to  
 equate what we're doing with a sporting event or rain,  
 but the point of it is there is no reason to make  
 probability into something it's not. Anybody have any

13 questions about probability and what it is? What it's  
 14 not, more specifically?

15 Do you find from the evidence beyond a  
 16 reasonable doubt there is a probability that the  
 17 defendant would commit criminal acts of violence? In  
 18 order to obtain a yes answer to this question, the State  
 19 is not limited in their proof to show that a defendant  
 20 on trial would probably commit future capital murders.  
 21 Certainly if that evidence exists, the State's entitled  
 22 to present it to you. But we're talking about the State  
 23 proving beyond a reasonable doubt the existence of a  
 24 probability that a defendant would commit, not a  
 25 specific crime, but a broad category of crime; that  
 being some crime that is an act of violence. And the  
 act of violence can be an act of violence either as to  
 persons or as to property.

1 Certainly capital murders, murders,  
 2 assaults, rapes, robberies, kidnappings, all criminal  
 3 acts of violence as to persons. Criminal acts of  
 4 violence as to property. Arsons, the burning of  
 5 somebody's vehicle, a building. Certain kinds of  
 6 burglaries that require breaking in to get onto land or  
 7 into a building, taking of a big bat, beating out the  
 8 windshield of an automobile. Those are all criminal  
 9 acts of violence as to property. Those are the type of

14 things generically that the State is obligated to prove  
 15 that a defendant would probably commit in the future,  
 16 not a specific crime. And these criminal acts of  
 17 violence must rise to the level that they constitute a  
 18 continuing threat to society.

19 Now, let's talk about society for just a  
 20 second. I think that more often than not when we think  
 21 of society, the first thing we think of is people that  
 22 we see; people in the neighborhood, people at the job,  
 23 family members, and so forth, the people that were  
 24 around. More often than not we don't think, when we  
 25 think of society, about people behind the walls of the  
 penitentiary; but they, also, are a piece of society.  
 And I'd ask you to consider making a distinction, if you  
 feel comfortable with a distinction, between the words  
 community and society. We all live in different  
 communities, but we're all a piece of the same society.

2 So, the lady who teaches school behind the  
 3 walls of the penitentiary, when she goes and she clocks  
 4 in at 8:00 o'clock in the morning to go do her work, we  
 5 know that when she gets into the penitentiary system  
 6 behind the walls, she does not lose her right to be free  
 7 from criminal acts of violence. And if she escapes  
 8 through the day with her life and gets back outside the  
 9 walls of the penitentiary, she doesn't reacquire the



15

1 freedom to be free from criminal acts of violence.  
2 That's preposterous. So, that's how we know the people  
3 behind the penitentiary walls are also a piece of  
4 society. That includes teachers, medical personnel,  
5 administrators, guards; and it also includes other  
6 prisoners who also have the right to be free from  
7 criminal acts of violence.

8

9 So this question, when we talked about it  
10 being continuing -- a continuing threat to society, we  
11 know that we're not speaking about a community; because  
12 if we were, the question would read, that the defendant  
13 would commit criminal acts of violence that would  
14 constitute a continuing threat to the citizens of Harris  
15 County, Texas. And the question doesn't say that.

15

16 It talks about society. So in that  
17 context society can mean all the people, all the time,  
18 everywhere. Now that's the first question. Any  
19 questions about the first question? If the jury should  
20 answer that first question no, the case is over. It's  
21 over because there is no way you can answer the second  
22 question to resurrect the possibility of the death  
23 penalty, because a no answer to the first question is  
24 different than yes or no. If the jury answers yes to  
25 the first question, we'll go to the second question.

25

Now, let's consider where a jury

16

1 necessarily must be when they take up the second  
2 question. First off, necessarily they must have found  
3 the defendant guilty of capital murder; because if they  
4 had not, we would never have these questions in the  
5 first place.

6

7 Secondly, necessarily the jury would have  
8 had to have answered yes to Question Number One; because  
9 if they had not, we would have never gotten to Question  
10 Number Two. So, what we're saying is that to get --  
11 when you get to Question Number Two, if you do, your  
12 jury will have unanimously and consistently voted in  
13 such a way to cause the defendant to receive the death  
14 penalty. Question Number Two asks you to review all the  
15 evidence in the case, to make sure that's the decision  
16 that you want to reach. It's your chance to withdraw a  
17 death sentence and substitute, instead, a life sentence.

17

18 Now the first feature about Question  
19 Number Two that we can see is this: We don't have the  
20 phrase, do you find from the evidence beyond a  
21 reasonable doubt? That phrase is not in that question.  
22 Now, that tells us something. First thing it tells us  
23 is since the phrase is not in the question, the State's  
24 not required to prove to you what the answer to that  
25 question should be. Well, we know from our conversation  
yesterday that the defendant never has to prove

17

1 anything, because he is the accused.

2

2 Well, if the State doesn't have to prove  
3 what the answer to that second question should be and  
4 they don't, and if the defendant doesn't have to prove  
5 to you what the answer to that second question should be  
6 and they don't, what does that tell us? That tells us  
7 that the law recognizes that there may be many, many  
8 cases where during the course of the trial there is  
9 absolutely no testimony of a mitigating nature at all.  
10 And we know that the law recognizes that as a  
11 possibility, because neither side is required to put  
12 that testimony in the case. The only requirement posed  
13 by the second question is that the jury review the whole  
14 case to see if there is anything of a mitigating  
15 circumstance in the case.

16

17 The first half of the second question is  
18 simply an instruction to the jury to go back over all of  
19 the evidence in the case, every single bit, for the  
20 purposes of deciding, is there a sufficient reason the  
21 death penalty should be eliminated in this case and  
22 replaced with a life sentence? When we use the word  
23 mitigating here, we're talking about some justifiable  
24 reason, if there is any, that makes you think that the  
25 punishment should be lessened from death to life. We're  
not talking about excusing conduct. We're not talking

18

1 about justifiable conduct. We're not talking about that  
2 at all, because obviously a life sentence is the very  
3 least that's going to happen.

4

5 The question that you need to resolve is  
6 this: Out of all the bad stuff that you heard about the  
7 case -- that is to say, all the bad stuff that was  
8 sufficient to cause you to unanimously find a defendant  
9 guilty of capital murder -- in all the bad stuff that  
10 caused you to unanimously answer yes to the first  
11 question, is there anything in the case that makes me  
12 believe that compared to all that bad stuff, there is  
13 some redeeming feature that makes me think a life  
14 sentence -- just because of the uniqueness of the case,  
15 whether it be the uniqueness of the defendant,  
16 uniqueness of the offense, uniqueness of the victim,  
17 whatever, perhaps all three -- that make me think a life  
sentence would be appropriate.

18

19 What a mitigating circumstance might be to  
20 one of you, that same information might not be  
21 mitigating to the rest of you. It's your call. For  
22 example, sometimes folks tend to think that if you have  
23 a young person on trial, comparative youthfulness might  
24 be mitigating, the idea being the person is not of a  
25 mature mind and sophisticated enough to make good  
intelligent decisions.

19  
1 Other people might think -- having heard  
2 exactly the same evidence -- might think, well, that's  
3 not true. Anybody that's that mean at that young age is  
4 going to be that mean for the rest of their life. It's  
5 the same piece of information, just evaluated  
6 differently by different people. Sometimes in a case  
7 there might be testimony about mental retardation. Some  
8 people think that might be mitigating. Some people  
9 might not. Some people say, wouldn't it depend on how  
10 retarded they are? We're talking about mildly,  
11 moderately, severely? Makes a difference. That's your  
12 call. The point being that if you determine there is  
13 any mitigating evidence in the case -- and there may be,  
14 and there may not be -- the next question you have to  
15 ask yourself is, does the mitigating evidence in the  
16 case, if there is any, rise to the level in your mind  
17 that makes you think that the death penalty should be  
18 withdrawn and replaced by a life sentence? If your  
19 answer to that question is yes, your answer to that  
20 whole question is yes. If your answer to that question  
21 is no, we don't think the mitigating testimony does rise  
22 to that occasion, then your answer to the whole question  
23 is no. Any questions about the second question?  
24 Okay. We talked about the punishment  
25 being life or death. What's the reason for spending

20  
1 time talking about what we mean by death? But sometimes  
2 we find folks come in with different thoughts about what  
3 a life sentence really means, and I'm going to tell you  
4 in this case what a life sentence really means. If this  
5 defendant is found guilty of capital murder, and if the  
6 jury should answer those two questions in such a way  
7 that I'm obligated to sentence the defendant to life, a  
8 life sentence means that the defendant cannot become  
9 eligible for parole consideration until the defendant  
10 has actually served forty calendar years, day for day,  
11 week for week, month for month, year for year. So,  
12 we're talking 2039.

13 Now what's going to happen in 2039, we  
14 haven't the foggiest. It's perfectly conceivable that  
15 one hypothetical defendant, after having served forty  
16 years -- and let's just say he's at the age of sixty at  
17 that time, the hypothetical defendant. It may very well  
18 be that person might spend the remainder of his life  
19 locked up in the pen and never get out. It's perfectly  
20 possible. It's also perfectly possible that another  
21 hypothetical defendant, at the conclusion of serving  
22 forty years, might very well be granted parole. We  
23 don't know what's going to happen, because whether  
24 parole is or is not granted is going to be made by  
25 evaluations of prison officials. That is to say, what

21  
1 kind of a person was this during his or her forty-year  
2 stay with us? Those evaluations made by those prison  
3 officials are going to be sent to the Board of Pardons  
4 and Paroles.

5 The Board of Pardons and Paroles is going  
6 to take those evaluations, and they're going to make  
7 recommendations to the governor of the State of Texas.  
8 And based upon -- I shouldn't say based upon -- the  
9 governor of the State of Texas is going to decide  
10 whether to grant parole or not grant parole. Now I  
11 don't know in the year 2039 who the governor of the  
12 State of Texas is going to be, but I do know it may very  
13 well be that they might make a decision to whether to  
14 grant or deny parole based upon the evaluation and  
15 recommendations made. It may be that they reject those  
16 evaluations or recommendations and make some decision on  
17 their own.

18 I simply don't know, but what I do want  
19 you to be sure of is that it's not going to be before  
20 forty years that a person becomes eligible to be  
21 considered for parole. Eligibility for parole  
22 consideration does not in any way mean that parole is  
23 going to be granted necessarily. Now, having said that,  
24 I also want you to know that your answer to these  
25 questions has got to be based on the testimony in the

22  
1 case. And I'm spending some time with you about this  
2 forty-year business; because I don't want somebody to  
3 think, well, I have heard that a person can get paroled  
4 in five years; and I don't want this to happen, so I'm  
5 going to always answer these questions in such a way  
6 that the death penalty is imposed. Well, that is not a  
7 possibility. It's forty years. So, I do want you to  
8 know what the rules are.

9 But we can't take into account how those  
10 rules are going to be applied to a particular human  
11 being forty years from now, because the variables are  
12 too great. We need to make our decision in the trial,  
13 whatever the decision is, on the basis of how you folks  
14 evaluate the information that these lawyers give to you.  
15 Anybody have any questions about that? Okay. Let's  
16 say that you can set it aside and talk about something  
17 else for a second. We have spent all of our time  
18 talking about capital murder.

19 In this case, the claim is two different  
20 types of conduct, that if either is proved beyond a  
21 reasonable doubt would warrant a jury's finding a  
22 defendant guilty of capital murder. There are about  
23 twelve different types of conduct that in the State of  
24 Texas, if proved beyond a reasonable doubt, would  
25 warrant a jury finding somebody guilty of capital

23

1 murder. We are here involved with two of them. And  
2 what we're going to find is that in each case, the  
3 requirement is that the State prove that there was  
4 intentional murder. No accident, no self-defense. That  
5 a person intended to cause the result, and committed  
6 that murder during the course of another serious felony.

7 One of the serious felonies alleged is  
8 kidnapping, kidnapping during the course of a murder --  
9 or murder during the course of a kidnapping, it should  
10 say, is a capital offense. A murder during the course  
11 of a murder -- that is, the intentional taking of the  
12 life of more than one person during the same episode --  
13 is also capital murder. Those are the two that we're  
14 dealing with. The other ten, let's don't spend any  
15 time, because there is no way they can come into play in  
16 this particular situation.

17 But let's talk about something that could  
18 possibly occur. I don't know that it's going to, but I  
19 want you to know it's a possibility; because anytime the  
20 State is required to prove the existence of two things  
21 beyond a reasonable doubt, there are three possible  
22 outcomes. Possible outcome No. 1. Maybe they can. And  
23 if they do prove the existence of the murder during the  
24 murder, or the murder during the kidnapping, then the  
25 jury's obligation is to find the defendant guilty of

24

1 capital murder.

2 Possible outcome No. 2. Maybe they can't  
3 prove beyond a reasonable doubt the existence of either  
4 of the two things. If they can't, the jury's obligation  
5 is to find the defendant not guilty of anything.

6 Possible outcome No. 3. Maybe the State  
7 can prove beyond a reasonable doubt the existence of the  
8 murder but, not be able to prove to the jury beyond a  
9 reasonable doubt that it occurred during the course of  
10 the commission of kidnapping. If that were to happen, I  
11 would give you a third option. You'll have the option  
12 of guilty, not guilty, capital murder.

13 The third option would be guilty of the  
14 offense of murder. That is to say, not capital murder,  
15 but murder. And we're talking about a lesser offense  
16 carved out of a greater offense, the greater offense  
17 being capital murder. And if you don't believe that it  
18 was committed during a kidnapping, which is a  
19 kidnapping/murder being a capital -- if you don't  
20 believe the murder occurred in a kidnapping, the lesser  
21 offense carved out would be the murder. Kind of like a  
22 piece of pie carved out of the whole pie.

23 The range of punishment for murder is just  
24 simply remarkably different than the range of capital.  
25 There is no range. It's life or death. But if a person

25

1 is convicted of the offense of murder in the State of  
2 Texas, that person could be punished by confinement in  
3 the penitentiary for life, or by confinement in the  
4 penitentiary for any number of years as long as that  
5 number is not less than five and not higher than  
6 ninety-nine. And in addition to the confinement, a fine  
7 not to exceed \$10,000 may also be imposed. That's an  
8 awfully wide range of punishment, and it is because  
9 there are all sorts of different kinds of murder, there  
10 are all sorts of different kinds of defendants, and  
11 there are all sorts of different kinds of victims. Some  
12 dead bodies were not as valuable alive as others were  
13 valuable alive. We know that, because we wouldn't think  
14 that a dope dealer would be quite as valuable to mankind  
15 on the whole as a preacher. The point being, whatever  
16 the evidence in the case, we want you to have room to  
17 roam through the range of punishment and come up with  
18 what you think is the right punishment to fight, A, the  
19 crime that was committed, and B, the person that  
20 committed it.

21 For example, here we've got a  
22 seventy-five-year-old couple, been married for fifty  
23 years, and they love each other dearly. And the Mrs. is  
24 on a life support system, and she is simply -- she and  
25 her husband have talked about this at the hospital.

26

1 They have been throughout it all. They have prayed.  
2 They've talked. They've cried about it. Done  
3 everything they could possibly think of to do. And she  
4 tells him she doesn't want the indignity of suffering  
5 and being in pain, and so forth, and being hooked up to  
6 this apparatus. And he thinks about it for several  
7 days; and finally he walks over to the wall, pulls out  
8 of plug, and she dies.

9 Now, without going into the morality of  
10 that, in this state that's murder. That may very well  
11 not be the kind of murder that you would think, if you  
12 were a juror, would be worth a life sentence; because  
13 the fellow that did it didn't do it out of hate, didn't  
14 do it out of anger, didn't do it out of revenge, didn't  
15 do it out of anything except for love. See, I say that  
16 to you just simply because I know out of what you see on  
17 television, you're all -- we are led to believe that all  
18 murders are just about the same. And they are.

19 So my question to you, to each of you is  
20 this: Assume with me for a second that you're a juror  
21 in some imaginary capital murder case. Your jury hears  
22 all the testimony in the case. Your jury goes out and  
23 deliberates, and your jury unanimously determines that  
24 the defendant on trial is not guilty of capital murder.  
25 But your jury does unanimously determine that the



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1 defendant on trial is guilty of murder.

2 You come back and you hear evidence at the  
3 second phase of the trial about the character and  
4 background of the defendant, whatever that evidence  
5 might be. Your jury goes out, and your jury  
6 deliberates. Is there anybody here who -- or under that  
7 set of circumstances, if after having heard all of the  
8 evidence in the case, and if you find that a life  
9 sentence was the appropriate punishment for the  
10 circumstances of that case, is there anybody here who  
11 would refuse to take a life sentence into consideration  
12 as a sentencing option if you thought that was the right  
13 thing to do based upon the facts in the case? I take it  
14 that it would be a consideration. And I'm not asking  
15 you would you do it? I'm just simply saying, is it  
16 available to you as a consideration if you think the  
17 right set of circumstances exist?

18 We'll take that same question and flip it.  
19 You're a juror in an imaginary capital murder case. The  
20 jury finds the defendant not guilty of capital murder,  
21 but the jury finds the defendant guilty of murder. You  
22 come back to hear at the second phase of trial about the  
23 character or background of the defendant, whatever  
24 evidence that might be. Your jury goes out and  
25 deliberates. My question to you is this: If after

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1 having heard all of that evidence in that case, whatever  
2 that evidence might have been, is there anybody here who  
3 would refuse to consider assessing that imaginary  
4 defendant's punishment at confinement in the  
5 penitentiary for five years if you thought, based upon  
6 the uniqueness of the testimony in that case, that that  
7 was the right result? And again, would five years be a  
8 legitimate sentencing option to you if you thought that  
9 was the right result to reach based upon the facts of  
10 that particular case? I gather that you would. And  
11 again, I'm not asking, would you do that? I'm asking,  
12 would you take that into consideration? And what we're  
13 trying to do is simply say at both extremes of the  
14 punishment range for the offense of murder, are you  
15 available to do either extreme or anywhere in --  
16 anywhere in between? And whatever decision you reach,  
17 would you reach that decision because that's where the  
18 facts led you, whether it's five years, twenty years,  
19 fifty years, seventy-five years, ninety-nine years, or  
20 life? Anybody have any questions about that?

21 Sir?

22 VENIREPERSON: Your Honor, I was  
23 wondering, if a defendant is convicted and sentenced to  
24 life and is incarcerated, if after that the Legislature  
25 changes the law --

29

1 THE COURT: It won't be retroactive as to  
2 the person that's there. Was that going to be your  
3 question?

4 VENIREPERSON: Yeah, because I recall a  
5 few years back the Legislature passed a law that did  
6 reduce sentences for people who had been incarcerated.

7 THE COURT: I don't recall that. The  
8 Legislature has spent a lot of time in the last ten  
9 years tightening up the parole laws. And so people who  
10 were convicted were under a new set of parole laws more  
11 strict than people who had been convicted. And those  
12 people were getting out, because that was the law that  
13 existed at the time of their conviction. Okay.

14 Two other things I wanted to talk about  
15 real quickly. We have a feature in our law and I just  
16 want to talk for a couple of seconds about a concept  
17 more than being specific and technically accurate.  
18 Basically, in the State of Texas our law says that if  
19 two or more people conspire to commit a crime and they  
20 go off and commit it, one of those people cannot be  
21 convicted solely upon the testimony of a coconspirator  
22 and nothing else. Our law says that a conviction can be  
23 had upon the testimony of a coconspirator as long as  
24 that testimony is corroborated by some other independent  
25 testimony or evidence that rises to the level that tends

30

1 to connect the defendant to the commission of the crime.

2 So, what I'm staying is this: If somebody  
3 else and I agree to go rob a bank and I'm the wheel man,  
4 and the bank robber goes in, robs the bank, comes out,  
5 jumps in the car, and off we drive, and I'm not in the  
6 bank, so nobody can identify me -- if the only testimony  
7 in the case is from the bank robber, and if there are no  
8 fingerprints found on the bank bag, for example, on the  
9 getaway car, for example, and nobody can identify me or  
10 I haven't given a confession or there is nothing else  
11 that tends to connect me to the commission of the crime,  
12 then I can't be found guilty solely on the testimony of  
13 the coconspirator. Now, anybody here have any objection  
14 to that concept in our law that rises to the level that  
15 would prohibit you from being able to follow it if it  
16 came into play in this case? I don't know whether it  
17 will.

18 One other area. We have two different  
19 kinds of evidence that can be presented during the  
20 course of a trial. We have direct evidence, and we have  
21 circumstantial evidence. Direct evidence means somebody  
22 saw something happen, or the person who is charged with  
23 a crime confesses to having committed the crime.

24 Circumstantial evidence is anything else.  
25 Circumstantial evidence can be testimony certainly other



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1 than eyewitness testimony that's conducive to establish  
2 a circumstance consistent with guilt when taken with  
3 other circumstances in the case shows guilt. Sometimes  
4 we hear people say, I couldn't ever find anybody guilty  
5 of crime based on circumstantial evidence. Well, let's  
6 talk about it.

7 For example, a fingerprint is  
8 circumstantial evidence. We all know from television,  
9 if from nothing else, that a fingerprint is absolutely  
10 the best identifying feature of a human being there  
11 could possibly be. The reason a fingerprint is  
12 circumstantial is we know that the person touched the  
13 object, but we don't know, A, when the object was  
14 touched; and B, we don't know where the object was when  
15 it was touched. So it's circumstantial.

16 Sometimes we have cases with direct  
17 evidence where the eyewitnesses are so untrustworthy, or  
18 unreliable, I should say, as witnesses that you don't  
19 believe beyond a reasonable doubt their testimony to be  
20 true. For example, let's say down here there is some  
21 goings on, and a human being gets shot with a gun, a  
22 pistol. There are three absolute near passed out drunks  
23 laying down there on the ground, and they see it. They  
24 come in and they swear under oath, man, I was drunker  
25 than a goat, but this is what I saw. Can you see how a

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1 jury might not find that imaginary defendant guilty  
2 based upon the testimony of three drunks?

3 Let's take that same set of circumstances,  
4 and let's say you have three other people in addition to  
5 the three drunks instead of the three drunks. You got  
6 to have one person who sees the victim standing right  
7 where the victim fell. You see -- you have another  
8 person who sees the defendant just before the shot fired  
9 within ten feet of the victim with his gun in his hand.  
10 He never sees the gun fired. You have a third person  
11 who the only thing he sees is, ten seconds after he  
12 hears the gunshot, he turns around, sees the victim  
13 laying on the ground and sees the defendant walking off  
14 with a gun in his hands. Nobody sees the gunshot. Can  
15 you see how the -- even though that circumstantial  
16 evidence that might be -- excuse me -- in addition,  
17 ballistically it's determined that the bullet that's in  
18 the victim's body was fired from the gun that was in the  
19 defendant's hand. Can you see how that circumstantial  
20 evidence might be far more reliable than that direct  
21 evidence from those three drunks?

22 So the point of it is, the law doesn't  
23 care whether testimony in a case is either direct or  
24 circumstantial. The law busies itself with a notion  
25 that whatever kind of evidence it is, it must be such

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1 that excludes all reasonable doubt in the jury's mind as  
2 to the defendant's guilt. So my question to you is  
3 this: Let's assume that you're a juror in a case and  
4 it's a capital murder case. You have heard all the  
5 evidence in the case; and all of the evidence in the  
6 case is circumstantial, but you do believe that evidence  
7 beyond a reasonable doubt. Is there anybody here who  
8 would refuse to find that imaginary defendant guilty of  
9 capital murder simply because the evidence was  
10 circumstantial even though you believed it beyond a  
11 reasonable doubt? Does that create a problem with  
12 anybody?

13 Okay. First year of law school is over.  
14 What questions do you have? Yes, ma'am?

15 VENIREPERSON: I understood the  
16 distinction between the punishment for capital murder  
17 and murder, but I didn't understand the distinction  
18 between what classifies one act as capital murder.

19 THE COURT: Capital murder -- well, the  
20 murder -- let's start at the bottom. Murder is the  
21 intentional taking of the life of another human being  
22 without any legal justification or excuse. Capital  
23 murder is exactly the same conduct, but with -- but  
24 being committed as another felony was also being  
25 committed and, as we've talked about, in one case the

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1 felony of kidnapping, the other case a felony of another  
2 intentional murder. Anybody else?

3 Okay. If you would, retire to the  
4 hallway. We'll call you back just as quickly as  
5 possible and get you on your way.

6 Miss Cantrell, please.

7 LYNNE WARREN CANTRELL,  
8 having been first duly sworn, testified as follows:

9 VOIR DIRE EXAMINATION

10 BY THE COURT:

11 Q. So you did succumb to the pressure.

12 A. I tried so hard.

13 Q. Very well. Miss Cantrell, let me ask a couple  
14 of questions before we begin. First off, take into  
15 account yesterday the things we talked about. Add to it  
16 this morning the things we talked about. Out of  
17 everything to this point that we have talked about, do  
18 you have any questions for me?

19 A. No.

20 Q. Is there anything up to this point that we have  
21 not yet touched on that you feel as though we should  
22 talk about because it might have some bearing on your  
23 service as a juror in this case?

24 A. No. But if something comes up, can I ask?

25 Q. We don't want you to keep it -- yes. Is there

35

1 anything, as far as you know right now, about your  
2 personal life, about your professional life, about your  
3 health, or anything else for that matter, that you feel  
4 would in any way interfere with your ability to be a  
5 juror in this case during the time frame we've talked  
6 about?

7 A. No.

8 Q. I believe, Miss Cantrell -- and this is just my  
9 notion -- but I believe that what this process we're in  
10 right now is meant to accomplish is two things. The  
11 first thing is to share with you what the rules are that  
12 can come into play during the course of the trial like  
13 this. And my question to you along those lines is, is  
14 there anything you've heard so far about which you find  
15 repugnant, displeasing, to the degree you would be  
16 unable to follow those rules if you were a juror in the  
17 case?

18 A. No.

19 Q. The second thing that I think this aspect is  
20 about is for you to satisfy yourself that if you did  
21 take a chair on one of these cases in this jury box  
22 during the course of this trial that you would sit back,  
23 listen to everything, drink it all in, evaluate it  
24 however you saw fit, and call it just the way you think  
25 it ought to be called based upon the evidence that's

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1 yesterday and today. Is there anything that's changed  
2 about what opinions you may have expressed or anything  
3 you think of that, well, you know, Friday I was thinking  
4 this, but now I've really got a different view on  
5 something?

6 A. No.

7 Q. All right. Can you tell me what kind of cases  
8 come to your mind when you think of cases where you  
9 think the death penalty ought to be available as one of  
10 the forms of punishment?

11 A. You mean, just like scenarios?

12 Q. Yeah, types of crimes, anything in particular  
13 that comes to your mind and says, well, if somebody  
14 commits this type of crime, I think it definitely ought  
15 to be available for that?

16 A. Most definitely an intentional or thought-out,  
17 planned, you know, taking the life of another person.  
18 Most definitely if another person were being involved,  
19 like another murder, because of that, you know, if two  
20 people were to die because someone wanted to kill  
21 another person and somebody else got in the way, most  
22 definitely I think that should be.

23 Q. Okay. Available for those type cases?

24 A. Uh-huh.

25 Q. Now I assume you understand. If you don't, let

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1 presented to you in the case. The idea being your job  
2 is not to satisfy one side or the other side; your job  
3 is certainly not to satisfy me, except for being on  
4 time. But your job is to satisfy yourself; because  
5 five years from now you're -- when you wake up one day,  
6 we want you to be able to say, what I did back then was  
7 absolutely the right thing to do. Does that sound like  
8 something you could do?

9 A. Most definitely.

10 Q. Before we begin, have you any questions?

11 THE COURT: Mr. McClellan.

12 MR. MCCLELLAN: Thank you, Your Honor.

13 VOIR DIRE EXAMINATION

14 BY MR. MCCLELLAN:

15 Q. Miss Cantrell, my name is Lyn McClellan. I,  
16 along with Claire Connors, we represent the State of  
17 Texas in this case. I want you to sit back and relax.  
18 We're going to ask you to share with us, if you will,  
19 some of your opinions and beliefs about certain aspects  
20 of the law that might apply in a case like this, give us  
21 a better idea of what your thoughts may be about a  
22 process like this. Okay?

23 First of all, you filled out the  
24 questionnaire the other day, I guess Friday or so. You  
25 had a chance to listen to the Judge's voir dire both

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1 me talk to you about that. There is no crime in the  
2 State of Texas where you automatically get the death  
3 penalty?

4 A. Okay.

5 Q. There is two parts to the trial. Guilt or  
6 innocence. Your job as a juror, along with the other  
7 jurors, is to determine whether or not the defendant has  
8 committed the crime as alleged in the indictment. We've  
9 alleged in this indictment that the defendant  
10 intentionally took the life of another person in Harris  
11 County, Texas, on a certain day, in the course of a  
12 kidnapping, murder during the kidnapping.

13 We've also alleged in the same indictment  
14 another way of committing capital murder, which is  
15 taking two or more people's lives during one criminal  
16 episode. Okay. Now the difference is -- the lady asked  
17 over there before we broke -- the difference between  
18 murder and capital murder is capital murder is murder  
19 plus some aggravating circumstance; murder during a  
20 robbery, murder during a kidnapping. We have a list  
21 here; during a burglary or a sexual assault; killing a  
22 police officer in the line of duty, killing a child  
23 under a certain age, killing two or more people in one  
24 criminal episode are kinds of cases the Legislature said  
25 the death penalty is available for. Any problem with

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1 that aspect?

2 A. No.

3 Q. Now the death penalty is not available for an  
4 intentional, premeditated murder unless there is some  
5 other aggravating circumstance. And that's what the  
6 Judge was talking to you about the range of punishment  
7 for a murder case being five years to ninety-nine years,  
8 or life. All murder -- for it to be murder is, by  
9 definition, an intentional act. So murder is the  
10 intentional taking of another person's life without any  
11 legal justification. By that we mean not self-defense,  
12 not an accident. We're talking about intending to kill  
13 someone and doing so. But for that the range of  
14 punishment is five to ninety-nine years, or life.

15 If that intentional murder is coupled  
16 with, as we've alleged here, aggravated kidnapping or  
17 taking another person's life, killing two people or more  
18 in one criminal episode, then it becomes capital murder.  
19 Any problems with those distinctions?

20 A. Huh-uh.

21 Q. Do you have any problem with the fact that in a  
22 murder case the death penalty doesn't apply and the  
23 range of punishment is five years to ninety-nine years,  
24 or life? Can you keep your mind open in that type of  
25 case to that full range of punishment?

40

1 A. Most definitely, uh-huh.

2 Q. Now some people come to us and say they are in  
3 favor of the death penalty as an appropriate punishment  
4 for certain types of crimes. Some people then go  
5 further and tell us they do not believe they could ever  
6 participate in a process whereby they would be called  
7 upon to make decisions; in other words, answer these  
8 questions over here knowing that the answers they gave,  
9 under order of this Judge -- or it could depend on how  
10 it's answered -- would order this Judge to order the  
11 execution of the defendant sitting over here on trial.  
12 Do you have any doubts about your ability to participate  
13 in that type of process and make that type of decision  
14 if that's what the law and the evidence calls for?

15 A. I don't have a problem with it.

16 Q. Now I want to talk to you for a moment about  
17 the punishment stage of a capital murder case. And I  
18 don't mean to slight the guilt/innocence stage, but  
19 guilt/innocence is basically we either prove what  
20 happened in the indictment or we don't.

21 There is going to be an indictment -- I  
22 mean, a charge to the jury that will say, Now if you  
23 find from the evidence beyond a reasonable doubt that  
24 on -- it will set out certain elements and we prove  
25 those elements, you find him guilty of capital murder.

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1 If you don't, you find him not guilty. If he's not  
2 guilty, we all go home. If he's guilty, then we go to a  
3 second part of the trial.

4 A. Okay.

5 Q. At this second part of the trial you may now  
6 hear additional evidence that you did not hear at  
7 guilt/innocence. You may hear evidence about a  
8 defendant's character, his background, his criminal  
9 history, or lack thereof, his mental ability or  
10 disability, how he grew up in his life, the type of  
11 surroundings he was around; because the emphasis there  
12 is on this individual who you have found guilty of  
13 capital murder, because you're going to decide what  
14 punishment this individual should receive for the crime  
15 you've already found that he's committed. So you're  
16 looking at information about that individual to help you  
17 decide what punishment to assess.

18 A. Right.

19 Q. Now when you get finished with all that  
20 evidence, then you'll be given these two questions at  
21 the punishment stage of a trial. So first you would  
22 have had to find the defendant guilty.

23 A. Uh-huh.

24 Q. That part's over. You then go to the  
25 punishment stage, hear additional evidence. After that

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1 part's over, then you go back and you're given these  
2 questions to answer. Now in answering those questions,  
3 you can look back to the evidence at guilt or innocence;  
4 because that may help you in deciding that issue. In  
5 fact, you're going to be directed by one of the  
6 questions. You can look at evidence about a defendant's  
7 character, his background, criminal history, or lack  
8 thereof, of the individual in helping answer those  
9 Special Issues, also.

10 Now just because you find someone guilty  
11 of capital murder doesn't tell you, or shouldn't tell  
12 you, what punishment you're going to receive (sic);  
13 because you haven't heard the rest of the evidence yet  
14 that is about the individual himself.

15 A. Uh-huh.

16 Q. You have to wait till you've heard all the  
17 evidence and process it altogether. Any problem with  
18 doing that?

19 A. No.

20 Q. Some people have come to us and said, well, if  
21 I found someone guilty of capital murder, which is, in  
22 fact, the intentional taking of another person's life,  
23 without any legal justification during the course of  
24 kidnapping or during the course of killing another  
25 person, I'm going to always find this person ought to



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1 get the death penalty regardless of what else I hear.  
 2 Well, that person has already made their mind up before  
 3 they ever get to the punishment stage of the trial; and  
 4 that's not proper. Can you assure us you're still open,  
 5 after finding somebody guilty of capital murder, to both  
 6 ranges of punishment, either life or death, depending  
 7 upon the answers to these questions?

8 A. Yes.

9 Q. All right. Now keep in mind that you had to  
 10 have found someone guilty; otherwise, you never get to  
 11 those issues.

12 A. Right.

13 Q. Issue Number One says: Do you find from the  
 14 evidence beyond a reasonable doubt -- and there again,  
 15 they're using those words. It puts the burden of proof  
 16 on the State. So you know the automatic answer to this  
 17 question is going to be no, unless and until the State  
 18 proves beyond a reasonable doubt that the answer's yes.  
 19 It's kind of like the automatic answer on  
 20 guilt/innocence is not guilty because of the presumption  
 21 of innocence until the State proves, if it does, beyond  
 22 a reasonable doubt that the defendant is guilty, okay.  
 23 So it says, do you find from the evidence beyond a  
 24 reasonable doubt there is a probability that the  
 25 defendant would commit criminal acts of violence that

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1 continuing threat to commit future acts of violence?  
 2 Are you open to answering that question either yes or  
 3 no, depending upon what evidence you heard at both the  
 4 guilt/innocence, as well as the punishment stage of the  
 5 trial?

6 A. Uh-huh.

7 Q. Okay. Now if you find that the answer to that  
 8 is no -- and that's the inquiry -- then the defendant  
 9 receives a life sentence. If you answer it yes, then  
 10 the defendant's going to receive the death penalty.  
 11 Notice in Issue Number Two, you decide he is not.  
 12 Because Issue Number Two then does not start out, do you  
 13 find beyond a reasonable doubt?

14 A. Right.

15 Q. It asks you, do you find that, taking into  
 16 consideration all of the evidence -- and then it goes on  
 17 to specify, including the circumstances of the crime --  
 18 that would be what happened at guilt or innocence, what  
 19 you heard at guilt/innocence, the defendant's character  
 20 and background -- that would be what you heard at the  
 21 punishment stage of the trial -- and his personal moral  
 22 culpability -- I'd like to refer to it as his personal  
 23 responsibility for the commission of the crime. In  
 24 other words, was he the person who pulled the trigger,  
 25 or stabbed with the knife, or choked with the hands, or

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1 would constitute a continuing threat to society?

2 First of all, they use the word  
 3 probability. It doesn't use the word possibility. They  
 4 could have chosen that word. They did not. It doesn't  
 5 use the word certainty. They could have used that word  
 6 and they didn't. Possibility -- I suggest to you  
 7 anything is possible.

8 A. Right.

9 Q. Certainty means it's definitely going to  
 10 happen. And probability might be defined as more likely  
 11 than not. So, in other words, it's more than fifty  
 12 percent chance that this would occur. So the question  
 13 is, do you find from the evidence beyond a reasonable  
 14 doubt there is a possibility or that it's more likely  
 15 than not that the defendant would commit criminal acts  
 16 of violence -- doesn't say another murder or capital  
 17 murder -- those are all criminal acts of violence.  
 18 Could be any other criminal act that is also violent in  
 19 nature; a robbery, a burglary, a shooting someone with a  
 20 gun but not killing them, hitting someone with your fist  
 21 so hard you knock them out, things of that nature.

22 And then you're to determine, after  
 23 hearing all the evidence, do you believe that the State  
 24 has proven that the defendant, as he sits there that  
 25 day, that there is a probability that he would be a

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1 was he a getaway driver? His personal responsibility.

2 Do you find there is sufficient mitigating  
 3 circumstance or circumstances -- I like to refer to it  
 4 as sufficient reasons -- why this person ought to  
 5 receive life as opposed to death? So what that question  
 6 is asking you now is to go back and look at everything  
 7 you have heard so far. And do you find there is  
 8 sufficient reasons why this person who you have found  
 9 guilty of capital murder and who you found to be a  
 10 probability of a continuing threat to commit future acts  
 11 of violence, his life ought to be spared because of some  
 12 mitigating circumstance, some reason that you found in  
 13 the evidence.

14 And to show you how that works, you may  
 15 have heard during the trial, of course, the defendant  
 16 was high on drugs or alcohol when he committed the  
 17 crime. Juror Number 1 may say, I think that mitigates  
 18 towards a life sentence; because when you get high on  
 19 drugs or alcohol, you do things you wouldn't ordinarily  
 20 do. Juror Number 2 may say, Wait a second. I know  
 21 people who have been high on drugs or alcohol many  
 22 times. They didn't go out and commit a capital murder.  
 23 I don't see a connection between that and the commission  
 24 of this crime, because they don't think it's mitigating.  
 25 So two people have looked at the very same piece of

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1 evidence, and one came up with one and one came up with  
2 another. And that's okay, because that's what the  
3 question is asking you to do. It's asking you to look  
4 at the evidence. You decide in your mind what effect,  
5 if any, it ought to be given.

6

Same thing about the age of the defendant.

7

Maybe he's a very young man. Juror Number 1 may say, I  
8 think that's mitigation towards a life sentence. Juror  
9 Number 2 may say, I don't think that has anything to do  
10 with whether he ought to get life or death. So two  
11 people, again, have different opinions. And that's  
12 okay.

13

You may have heard evidence at the trial  
14 the defendant was a special ed-type student. Somebody  
15 said, I think that mitigates towards life. Somebody  
16 else may say, Well, I don't think that has any effect.  
17 I know people that have the same mental problem he has  
18 in my neighborhood, church, work, whatever, school; and  
19 it's not a problem to them. I don't see how that's a  
20 connection to this. All that question does is permit  
21 you to go back and look at the evidence and see, are  
22 there reasons why we should give this person life as  
23 opposed to death? And if you find them, and they are  
24 sufficient in your belief to change your vote from death  
25 to life, would you do so? If not, then you leave it

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1 that says, Do you believe that mitigating evidence,  
2 concerning a capital murder, of the defendant's  
3 background should be considered in deciding whether or  
4 not he or she should receive the death penalty? And you  
5 checked no as your response there. Now having been  
6 through this process, you know that mitigating evidence  
7 is basically, by law, required to be considered?

8

A. Right, which I didn't know.

9

Q. Do you have any problem with that?

10

A. No.

11

Q. The fact that it's required to be considered --  
12 and I've tried to explain to you on Issue Number Two  
13 about how you have to look through all the evidence and  
14 see if there is things that are mitigating. A lot of  
15 times I'm not sure people understand what the word  
16 mitigating means in this concept.

17

A. It's not whether or not he would be guilty.

18

It's just deciding the punishment.

19

Q. That's exactly right. At the punishment stage  
20 of a trial, your answer to those questions will never  
21 undo finding him guilty.

22

A. Okay.

23

Q. It will affect what punishment he should  
24 receive, and that's why we have that stage of the trial.  
25 So because you go through, and let's say you find there

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1 like it was. All right?

2

A. Uh-huh.

3

Q. Any problem with that aspect?

4

A. No.

5

Q. What did you think about last night when you  
6 were thinking about, well, I'm going to have to come  
7 down here; and, you know, it's a prospect I could be a  
8 juror in case like this, and the prospect of the death  
9 penalty might be an option in a situation. Any  
10 particular thoughts that went through your mind?

11

A. I do think it's interesting. Actually, I  
12 prayed about it, and I just -- I'm at peace with it. If  
13 I were to be chosen to make a decision one way or the  
14 other, I'm at peace with it.

15

Q. Okay. Do you have any preconceived idea of  
16 what your decision would be?

17

A. No, I haven't heard any evidence.

18

Q. You haven't heard any evidence. That's a good  
19 response; because without that, I don't know how you  
20 would ever know. But you'd be surprised. Some people  
21 come in and say, I could never consider a certain range  
22 of punishment. And we go, You haven't heard the facts.  
23 How do you know you can't consider it? Some people have  
24 already written it off ahead of time.

25

There was a question in the questionnaire

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1 is mitigating evidence, doesn't mean you're finding that  
2 it was okay to have killed a person. You're just  
3 finding that, based upon all the circumstances that  
4 you've heard and all the evidence, that a life sentence  
5 is more appropriate for this defendant for what he did  
6 than what a death sentence might be. You could  
7 obviously have a wide range of types of people that we  
8 have on trial.

9

You may have somebody who's never been in  
10 trouble with the law before, or a straight A student,  
11 choirboy, Eagle Scout, whatever. You may have somebody  
12 else that's been in and out of trouble all their life.  
13 You may have anywhere in between those two extremes.  
14 And your job then is to look at that evidence and see  
15 how that affects either of those issues, either Number  
16 One or Number Two. And would you be able to do that?

17

A. Yes.

18

Q. We are looking for [r people who can take an  
19 oath that they will a true verdict render based upon the  
20 law given to them by the Court and the evidence they  
21 hear from the witness stand. And the Judge often puts  
22 it this way: Your job as a juror is to go wherever the  
23 law and the evidence leads you. And if it leads you to  
24 find a person not guilty, so be it. If it leads you to  
25 find them guilty, so be it. If it leads you to answer



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1 these questions in such way that death results or leads  
2 you to answer in such way that life results, okay. You  
3 just go where the law and the evidence leads you. Any  
4 reason that you know of that you wouldn't be able to  
5 take that oath and follow those instructions?

6 A. No.

7 Q. Anything that you think I need to know that  
8 would affect your service as a juror in case like this?

9 A. No.

10 Q. Okay. One last thing. You talked about the  
11 kinds of cases where it came to your mind when you think  
12 of cases where the death penalty ought to be available,  
13 and you talk about intentional and premeditated-type  
14 situation. And, of course, as I say, all murders are  
15 intentional; but for the offense of murder by itself,  
16 the death penalty doesn't apply.

17 A. Uh-huh.

18 Q. Can you assure me that just because the crime  
19 is an intentional crime, which it has to be in order for  
20 the defendant to be the victim, that that won't lead you  
21 to believe that a person automatically ought to receive  
22 the death penalty just because it's an intentional  
23 crime, because it has to be?

24 A. Right, yes, I can.

25 Q. Thank you very much, Miss Cantrell.

52

1 MR. MCCLELLAN: And I'll pass the  
2 venireman.

3 THE COURT: Thank you.

4 Mr. Hill.

5 MR. HILL: Thank you.

6 VOIR DIRE EXAMINATION

7 BY MR. HILL:

8 Q. Miss Cantrell, my name is Wayne Hill. Kurt and  
9 I both are representing Mr. Mamou. I'm going to take a  
10 few moments to visit with you. The reason I sit up here  
11 is that ledge is in the way of seeing people.  
12 Mr. McClellan has spent some time basically explaining  
13 certain concepts of the law to you and trying to get you  
14 to commit that you would follow the law, and that's  
15 fine. Those people that come here individually,  
16 privately, are given the opportunity to just express  
17 themselves; because this is the only point in time where  
18 if a person has a particular feeling one way or the  
19 other, whether it favors the State, whether it favors  
20 the defense to the point where it might disqualify them  
21 as a prospective juror, that we get to find out about  
22 that.

23 In other words, you have not been given  
24 the oath of a juror just yet. So if you had a feeling  
25 about any point of law that has been discussed with you

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1 that you feel very strongly about and, in all fairness,  
2 you feel would play a large role in your ability to sit  
3 in a case like this, now is the time to tell us.  
4 Because it's, quite frankly, too late if you get put on  
5 the jury, you're sitting in the jury room; and for the  
6 first time it dawns on you that, gosh, you know, I  
7 thought I could do this; but now that I really think  
8 about it, I should have told somebody about this aspect  
9 of my life or my feelings about a particular law.

10 So if we have that understanding, that's  
11 all I ask we do; because we all have to trust you have  
12 given this your complete consideration, as you obviously  
13 have, and that you would share things with us. It's not  
14 a test to see if you're a good person. It's not a  
15 civics test. Quite frankly, all of us have personal  
16 feelings about any number of things.

17 A. Uh-huh.

18 Q. And the real barometer is, does our personal  
19 feelings cause us to view things in a certain way that,  
20 in all fairness to both sides, possibly they should know  
21 about? So that's all I ask that we do. Is there  
22 anything at all that has been discussed with you up to  
23 this point that's even made you feel a little bit  
24 uncomfortable? Maybe some aspects of the law the Judge  
25 has discussed or anything that Mr. McClellan has

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1 discussed with you?

2 A. No, not at all.

3 Q. Oftentimes questions will be posed to you in a  
4 way that they kind of project what the answer should be.

5 A. Uh-huh.

6 Q. You know, some people tell us they would  
7 automatically vote for the death penalty if somebody  
8 were found guilty of capital murder. The law requires  
9 you to consider everything before making a decision.  
10 Well, in that situation you're told ahead of time that  
11 if you're going to say, well, I don't feel comfortable  
12 with that, that you're basically saying that you're not  
13 going to follow the law.

14 I'm interested in you educating me about  
15 yourself. Okay. You said that it was interesting when  
16 Lyn asked you about your thoughts. What do you mean by  
17 that?

18 A. Just to see how the system really works and to  
19 be a part of it. Not that I'm taking this lightly at  
20 all. I'm not.

21 Q. I would hope that anybody that is involved in  
22 this process at all, at any level, would take it on a  
23 very serious note.

24 A. Uh-huh.

25 Q. What do you mean by, you're at peace with

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1 yourself? How do you arrive at that point where you're  
2 comfortable, I assume, with being here and if called  
3 upon, make decisions?

4 A. Well, just that, to make a decision, I feel  
5 that I am -- I'm a real open-minded person and I just  
6 know I can look at everything and then make a decision;  
7 and based on what I'm supposed to look at what I am, you  
8 know, like following the law and not letting any of my  
9 personal beliefs in any way, I think, interfere with  
10 that decision at all.

11 Q. Tell me some of the things that you do think,  
12 because that allows us to have a fuller picture of who  
13 you are, if there is any -- what is the strongest  
14 feeling that you have about the death penalty? If you  
15 had to make an argument in favor of the death penalty,  
16 what would your strongest argument be?

17 A. That there is -- I just believe that people  
18 need to be responsible for their behavior --

19 Q. Right?

20 A. -- whether it's good or bad. You know, there  
21 is consequences for everything.

22 Q. Right.

23 A. And if the law -- if, you know, the law is  
24 this, and this is a consequence for it and you break  
25 that, that's just the way it is.

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1 Q. Okay. Well, when you look at those questions,  
2 when you -- and you understand, you don't even get to  
3 those questions until such time as you have found beyond  
4 a reasonable doubt that the person is guilty of the  
5 crime they're charged with?

6 A. Right.

7 Q. And in this particular case the State has  
8 alleged that either Mr. Mamou killed a woman while they  
9 were kidnapping her or -- alternatively, or they're  
10 going to try and prove that this individual killed a  
11 woman and a man during the same transaction. So, you  
12 know, as you sit there, if you and eleven other people  
13 find unanimously that Mr. Mamou committed that crime,  
14 you're then going to be faced only with the decision of  
15 whether he receives life or death.

16 A. Right.

17 Q. Now, what are your feelings going into that  
18 second stage of the trial, especially in light of the  
19 fact that you now understand what it takes to be found  
20 guilty of capital murder? How do you approach these  
21 two questions?

22 A. Well, I don't know the circumstances; but  
23 people do things -- I mean, he could have  
24 accidentally --

25 Q. No, no accident, no self-defense, no legal

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1 justification at all.

2 A. Well, the death of this woman and the death of  
3 this man -- I don't know what triggered him to do this.  
4 I mean, you need to know all those things. Was this a  
5 jealous -- I mean, there is all kinds of things that go  
6 through people's heads when they do things.

7 Q. The reason that I jumped in as soon as you said  
8 accident, I wanted to very clearly remove any question  
9 in your mind; because a lot of jurors, the first thing  
10 that comes to people's mind is, well, if it was an  
11 accident or if it was in self-defense. If anything's  
12 constituted a legal defense to the allegation, your job  
13 would be to find the person not guilty altogether.

14 A. Right.

15 Q. So that's why I jumped in.

16 A. Maybe I shouldn't use the word accident. I  
17 meant, didn't really want to or mean to kill her.

18 Q. Okay.

19 A. You know what I'm saying?

20 Q. Yes. Would it be a fair statement -- am I  
21 interpreting what you just said to mean that the  
22 circumstances of the very crime for which you have found  
23 the person guilty could cause you to feel that a life  
24 sentence rather than the death penalty would be most  
25 appropriate?

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1 A. Correct, not whether or not he's guilty, but  
2 depending on the -- right.

3 Q. What?

4 A. And him, everything about him.

5 Q. Okay. So do you think in a hypothetical case  
6 you could have somebody that's been in trouble before,  
7 yet the circumstances of how this particular case  
8 occurred could be causing you to view it in a way that  
9 mitigation does exist?

10 A. Uh-huh.

11 Q. And potentially, a life sentence would be  
12 appropriate?

13 A. Uh-huh.

14 Q. Each case and each circumstance of that case  
15 has to be taken on its own merits then?

16 A. Right.

17 Q. What exactly does your daily job as a customer  
18 service representative bring you? What do you do?

19 A. Try to make people happy.

20 Q. Are you good at it?

21 A. Yeah, but I get a lot of -- I'm the brunt of a  
22 lot of unhappiness, you know. I have to fix problems.

23 Q. Like a mediator?

24 A. Right, most definitely, that's what I do all  
25 day.

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1 Q. You like that job?

2 A. Uh-huh.

3 Q. You've been doing it about six months?

4 A. Customer service about six years actually, but  
5 at this company, yeah.

6 Q. Now I notice when it asked, Name three people  
7 you respect, you put mom and dad and the co-worker. Is  
8 the co-worker Marlene Farmer. How come?

9 A. She's just a very honest, sincere -- she's just  
10 a very good person, and she -- yeah, yeah.

11 Q. She must be somebody that leaves a very lasting  
12 impression. I assume you've only known her about six  
13 months?

14 A. Right.

15 Q. Real upbeat individual?

16 A. Yeah, not real outgoing or anything. She's  
17 very real, very real, genuine.

18 Q. Do you think that's how she would describe you?

19 A. Yeah. She might throw in a little outgoing in  
20 there.

21 Q. Okay. Do you see yourself as a person that is  
22 pretty well seated in terms of your beliefs and, you  
23 know, you're real comfortable with your own decision  
24 with --

25 A. Who I am?

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1 Q. -- decision making abilities?

2 A. Most definitely.

3 Q. What type of pressure do you think you would  
4 feel if you're listening to a case; say it's a horrible  
5 set of circumstances; you hear all this terrible  
6 evidence.

7 A. Uh-huh.

8 Q. And yet, you really don't believe that the  
9 State has proven their case beyond a reasonable doubt.  
10 The Judge is going to give you a definition of what that  
11 means; but ultimately, you and eleven others will have  
12 to decide whether or not the State's evidence matches up  
13 properly to that burden. How are you going to feel  
14 about the prospect of you having to say not guilty? You  
15 think that there was a lot of evidence that may have  
16 suggested or strongly hinted at a defendant's guilt; and  
17 then you have to, you know, go to work the next day.  
18 And maybe somebody says, Hey, Lynne, how did that case  
19 go? I mean, are you going to feel awkward among your  
20 coworkers or maybe your friends or family? Are you  
21 going to feel like you have to explain to them why you  
22 reached whatever decision you did?

23 A. No, because it's my job to make a decision on  
24 what evidence is given to me. So if there is a problem,  
25 I can't hold myself responsible for that.

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1 Q. A lot of times people react when they see  
2 things in the newspaper. I think we're all -- that's a  
3 natural reaction, if you read something in the  
4 newspaper; and, of course, headlines, by their very  
5 definition, are placed in the paper to grab your  
6 attention.

7 A. Uh-huh.

8 Q. Would you agree with me, though, that if you  
9 were to try and decide a case based on what you read in  
10 the news, that may not be the fairest way to go about  
11 doing it?

12 A. No, not all. ?

13 Q. You know, I look back. And one of the examples  
14 I always like to use is the situation years ago in  
15 Washington, where then President Reagan was getting out  
16 of the vehicle, or walking towards a vehicle, and John  
17 Hinkley was charged with attempting to kill him. And  
18 here we have a case tried in the nation's capital.  
19 Different people come in from different walks of life.  
20 They listen to the case, and they ultimately find this  
21 individual not guilty by reason of insanity. Do you  
22 think that that was an easy decision for twelve people  
23 to have to make, knowing full well the president was, in  
24 fact, shot and there is no doubt about the fact that  
25 this is the man who fired the shots? But they had to

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1 decide that case on a legal basis as opposed to a  
2 factual basis. You know, did he do it? There is  
3 something wrong with the man's head, obviously, that  
4 caused the jury to make the finding they did. How did  
5 you feel about something like that?

6 A. I'm sure it would be difficult. But, you know,  
7 I'm sure they went through what I'm going through. And  
8 they had their chance to speak up and say they couldn't  
9 feel comfortable with it, so I wouldn't think it would  
10 be that hard for them.

11 Q. You think those are the twelve people that got  
12 to listen to all the evidence day in and day out --

13 A. Uh-huh.

14 Q. -- rather than maybe the news reporter that was  
15 there for the morning session, but missed the afternoon  
16 session?

17 A. Right.

18 Q. You know, the State oftentimes refers to people  
19 as victims, and that conjures up a thought in people's  
20 mind right away that they're a victim. It means that  
21 that person has no blameworthiness or has nothing to do  
22 with, you know, either contributing to their death or  
23 causing their death at all.

24 I want to make sure you understand the  
25 indictment. Nowhere in the indictment does it allege

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1 that either Mary Carmouche or Terrence Gibson are the  
2 victim. They are named as individuals that the State  
3 alleges our client was responsible for taking the life  
4 of under circumstances that did not constitute  
5 self-defense or an accident. But I don't want jurors  
6 coming into the case making that assumption, because --  
7 and I'm not suggesting that there couldn't be victims in  
8 the case. But the question of whether or not a  
9 particular defendant is responsible for their death or  
10 anything like that is of concern to me. You see where  
11 I'm coming from?

12 A. Uh-huh.

13 Q. How do you feel about sitting on a case -- you  
14 know that the Judge has indicated to you that the burden  
15 is always upon the State, and they must prove their case  
16 beyond a reasonable doubt. How do you feel about  
17 sitting on a case and having to possibly make a decision  
18 based on the standard of beyond a reasonable doubt  
19 rather than actually making a determination that a  
20 particular defendant is innocent? Do you see the  
21 distinction between innocence and the burden of proof,  
22 beyond a reasonable doubt?

23 A. Right, right. You mean, if I really thought he  
24 was guilty, but the State didn't have enough evidence to  
25 prove to me within a reasonable doubt?

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1 Q. Yes.

2 A. I wouldn't be happy, but I would have to decide  
3 as the law told me to. It doesn't mean I'd like my  
4 decision.

5 Q. Are you comfortable with that, though? Because  
6 obviously, I'm making sure that of the twelve people  
7 that are seated on this jury, that I can rely honestly  
8 on all the answers they give, and also any commitments  
9 they make to me. Mr. McClellan received several  
10 commitments from you about following the law. And  
11 obviously, I wanted to do the same. I want to make sure  
12 you're comfortable. And if you're comfortable with that  
13 and you can make that pledge to me, that if it came down  
14 to a question of, I didn't feel that the State had  
15 established beyond a reasonable doubt the defendant's  
16 guilt, or I don't feel that the State has established  
17 beyond a reasonable doubt that there is a likelihood  
18 that he would be a continuing threat to society, I'll  
19 make whatever answers I think the evidence will show?

20 A. Right, I have no problem with that.

21 Q. Because I don't think there is any case tried  
22 in the criminal courthouse that doesn't call out for an  
23 emotional response. This is a very real place. Right  
24 now it's not so real, because it's kind of sterile.  
25 We're just sitting here talking. So there is a great

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1 deal at stake, but the pressure that exists during the  
2 trial is not the same as it is right now. And I just  
3 want to make sure that people understand the distinction  
4 and they're comfortable with it?

5 A. Uh-huh.

6 Q. Do you think you could realistically conceive  
7 of a situation where a person has been found guilty of  
8 capital murder, you found beyond a reasonable doubt that  
9 that person is likely to be a continuing threat to  
10 society; in other words, you answered Question Number  
11 One yes, and you would still consider life as an  
12 appropriate option or alternative to the death penalty?

13 A. Yes.

14 Q. Okay. Because that's exactly what you're going  
15 to do if the State establishes this case. You are going  
16 to be called upon to determine really just one question  
17 at that point. Because you understand that the moment  
18 you find a person guilty of capital murder, life is  
19 automatic. The only thing is that can go from being a  
20 life sentence to becoming a death penalty.

21 A. Right.

22 Q. And as Mr. McClellan said, you don't undo your  
23 verdict. In other words, you get there and you believe  
24 that there is mitigation. You believe maybe the  
25 circumstances of the crime that you had found the

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1 defendant guilty of may really cause you to have some  
2 confusion, maybe some residual doubt, something about  
3 that that leaves the jury with the feeling that, you  
4 know, the death penalty is just not appropriate for  
5 whatever reason. It doesn't undo the guilty verdict.  
6 It merely says life rather than death. And you're okay  
7 with that?

8 A. I'm fine.

9 Q. Do you think that that is a comfortable option  
10 that the Legislature has given you, as a juror?

11 A. Yes.

12 Q. Would you include a third option, and would you  
13 take away a life sentence and make it mandatory that the  
14 death penalty be assessed in situations where a person  
15 commits capital murder?

16 A. No; because then I would be saying there is no  
17 circumstances at all, no.

18 Q. Right. One of the things that I ask people --  
19 and see, this is one of those situations where it's  
20 unrealistic; because you've never been in trouble  
21 before, right?

22 A. No.

23 Q. Never been charged with a crime before?

24 A. I have. I got a speeding ticket.

25 Q. You could never, in your wildest dreams,



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1 conceive of sitting in that chair where Mr. Mamou is  
2 sitting?

3 A. No.

4 Q. But I'm going to put you there for a moment.

5 A. Okay.

6 Q. I'm your attorney. And the jury has just found  
7 you guilty of capital murder, and now we have to proceed  
8 to a second stage of the trial. What difference would  
9 it make about anything in your life up to that point for  
10 this jury to make a decision? Why would you want the  
11 jury to know anything about you at all?

12 A. Because if they had a chance to change my  
13 punishment from death to life, I would want them to know  
14 exactly what happened, what kind of person I am, how I  
15 grew up, everything that I could possibly let them know  
16 about me so they could make their decision.

17 Q. Okay.

18 A. So they can make a better decision.

19 Q. You see that the sheer weight of the kind of  
20 decision that the jury is going to be making if they  
21 have found somebody guilty of capital murder demand that  
22 nothing less than that be done?

23 A. Uh-huh.

24 Q. I don't want jurors who are going to tell me  
25 things like, if you do the crime you got to do the time,

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1 looking at you and saying, you know, trust the case to  
2 her?

3 A. No. Are you?

4 Q. No. But I always give people that option,  
5 because you just never know what a person is thinking.  
6 And if there is even the slightest hesitation on the  
7 part of the juror, you know, this is kind of the time to  
8 tell the Judge or us. And otherwise, you get called  
9 back for the 29th.

10 A. No, I don't have any other questions.

11 Q. Okay. Thanks a lot.

12 THE COURT: Miss Cantrell, in just a  
13 second I'm going to excuse you. Before I do, I want to  
14 tell you that we do want you back on the 29th. In just  
15 a second I'll give you a piece of paper. And then what  
16 we're doing is we're talking to folks. There will  
17 eventually be probably about 48. Every single one of  
18 you will have been through exactly what you've been  
19 through on that day. We'll spend maybe as much as two  
20 hours. I can't imagine it would be longer than that.  
21 And when we conclude on that day, everybody will leave  
22 here knowing definitely whether they are or are not a  
23 juror on the case.

24 Between now and the 29th, which I believe  
25 to be two weeks from tomorrow, don't you alter your life

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1 cliches like that, or everybody needs to be treated the  
2 same. That sounds like an inherently fair statement.  
3 Would you agree? That sounds right at first, or maybe  
4 it doesn't.

5 A. Kind of, but not really.

6 Q. Okay. Because think of somebody --

7 A. Nobody is the same.

8 Q. That's why this is an individualized process.  
9 You can't lump people together, and you can't paint with  
10 a broad brush. You've got to be real specific, and  
11 you've got to look at the situation. You wouldn't want  
12 anything less for yourself?

13 A. Correct.

14 Q. And you wouldn't deny that to Mr. Mamou or  
15 anybody else?

16 A. No.

17 Q. What type of questions do you have of me?

18 A. None, I guess.

19 Q. Because we don't get to ask any more questions,  
20 or you don't get to ask us questions beyond this point.  
21 Once we say we're going to invite Miss Cantrell back to  
22 sit on the panel on the 29th, we'll talk to you a little  
23 more at that time and decide either you're one of the  
24 twelve or you go home. Any reason that I should be  
25 uncomfortable sitting here, as a defense attorney,

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1 one bit for us. Do your things just exactly like you  
2 do. Do your personal things exactly like you do them.  
3 If you have a chance to leave town, take the chance and  
4 go. All that we ask of you between now and when we see  
5 you next is this: Please do not talk about this case  
6 with anybody.

7 A. Okay.

8 Q. Please do not permit anybody to talk about this  
9 case with you. If there should be any news media  
10 treatment regarding this case, avoid it. Anything on  
11 the television, refuse to watch it; radio, refuse to  
12 hear it; newspaper, refuse to read it. The reason for  
13 each of those are five restrictions, at least the three  
14 aspects of the media -- and you're talking about  
15 everybody else for the purposes of accomplishing the  
16 same single objective, and that objective is this: If  
17 you do become a juror in the case, that decision that  
18 you reach, whatever it winds up being, is to be based  
19 exclusively upon information you receive from within the  
20 courtroom, and cannot in any way be affected or  
21 influenced by anything outside of the court information.  
22 So we'll try to make it as pristine as we possibly can  
23 from that standpoint.

24 If anybody needs to know where you have  
25 been or what -- if anybody wants to know that you have



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1 been here for three days, that will cover it. That is  
2 your personal reminder as to where and when we want you  
3 to be the 29th. Nobody else gets one. Be here by 9:30  
4 right outside the door; and if we can get started on  
5 time, that's a deal.

6 KATHERYNE M. STEPHENS,

7 having been first duly sworn, testified as follows:

8 VOIR DIRE EXAMINATION

9 BY THE COURT:

10 Q. How are you today?

11 A. Okay, thank you.

12 Q. Miss Stephens, first off, let me ask you to  
13 remember back to yesterday and the things we talked  
14 about yesterday when we were together. Add to it this  
15 morning, the things we talked about this morning. Out  
16 of everything that we have talked about up to now, do  
17 you have any questions at all for me?

18 A. No, I don't.

19 Q. Is there anything to this point that we have  
20 not yet addressed or touched on that you feel as though  
21 we should, because it might have some bearing on your  
22 ability to be a juror in this case?

23 A. No.

24 Q. You don't possess any secret information?

25 A. No.

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1 Q. Is there anything at all that you can think of,  
2 whether it be something about your personal life or  
3 whether it be something about your professional life or  
4 something about your health or something else, that in  
5 any way, in your mind, would interfere with your ability  
6 to be a juror in this case during the time frame that  
7 we've talked about?

8 A. The time frame is only in October, so there is  
9 nothing in October.

10 Q. I think that this process is about, primarily  
11 for the purpose of accomplishing two things. One, to  
12 give you some idea about some of the rules that can come  
13 into play. Obviously, as we've talked about, whether  
14 they do or do not, it would depend upon what the  
15 evidence in the case is. But any rules you've heard us  
16 talk about so far about which you have any disagreement  
17 or any dispute?

18 A. No disagreement.

19 Q. I take it then if you were a juror in the case  
20 and if any of these rules we have talked about do come  
21 into play, as a juror, you could both follow, as well as  
22 enforce those rules?

23 A. Right.

24 Q. I think the second thing this phase is about,  
25 Miss Stephens, is for you to be sure with yourself, to

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1 satisfy yourself that if you are a juror in the case,  
2 you'll sit back in any one of those twelve chairs and  
3 listen to all the testimony that's presented, evaluate  
4 however you think, and come up with whatever you think  
5 is the right result based upon how you evaluate the  
6 information the lawyers give to you. Does that sound  
7 like something you can do?

8 A. Yes.

9 Q. We talked about the fact that there are two  
10 equally available punishments if a person is found  
11 guilty of capital murder. One of those available  
12 punishments is life. One of those available punishments  
13 is death. And we talked about how it was decided who  
14 gets life and who gets death, and it's by how the jury  
15 answers those questions.

16 Can you see, Miss Stephens, that each of  
17 those questions is independent from the other question?

18 A. Yes, I can see that.

19 Q. The first -- because they ask for two different  
20 things. Now you look at the same body of information,  
21 that being the testimony in the case; but it asks you to  
22 analyze different things for the purposes of coming up  
23 with a different answer.

24 So what I'm saying is just simply because  
25 the first question is answered one way, that in and of

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1 itself does not dictate how the second question is  
2 answered.

3 A. Yes.

4 Q. Before we begin, do you have any questions?

5 A. Not yet.

6 THE COURT: Okay. Mr. McClellan.

7 MR. MCCLELLAN: Thank you, Your Honor.

8 VOIR DIRE EXAMINATION

9 BY MR. MCCLELLAN:

10 Q. Miss Stephens, my name is Lynn McClellan; and  
11 along with Claire Conners, we represent the State of  
12 Texas in this case. I want you to sit back and relax.  
13 We're just going to ask you to share with us, if you  
14 will, some of your opinions about certain aspects of the  
15 law. I also want to go through your questionnaire and  
16 follow-up on some of your answers there and try to get a  
17 better idea of what your thoughts are about this  
18 process.

19 Can you tell me in your own words what you  
20 think about the death penalty?

21 A. What I believe is that it is necessary for some  
22 cases, depending the circumstances.

23 Q. What kind of cases come to your mind when you  
24 think of cases you think the death penalty ought to be  
25 available as a form of punishment?

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1 A. I think if it was a person who, for example,  
2 you know, that killed children and that I believe that  
3 they would continue to do that.

4 Q. Okay. Anything else come to your mind?

5 A. Other cases, I think if it was just a case  
6 where a person would be a threat to society and I would  
7 not want them out for parole anytime --

8 Q. Okay.

9 A. -- depending on their backgrounds. You know,  
10 that would depend on the case.

11 Q. Their backgrounds?

12 A. And their backgrounds.

13 Q. You indicated on your questionnaire that you  
14 used to be opposed to the death penalty, and you then  
15 changed your mind; is that correct?

16 A. Yes, when I was younger.

17 Q. Was there anything that caused you to change  
18 your mind, where you identify with the point in time you  
19 changed it?

20 A. I was raised to believe it's not right to kill  
21 for any reason. But then as I grew older and, you know,  
22 more experienced in life and seeing, you know, through  
23 the years cases of crimes committed, then I came to  
24 believe that in some cases it is necessary.

25 Q. Okay. Now --

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1 A. If that is the law, then I would follow the  
2 law.

3 Q. Okay. Have you ever heard of cases where you  
4 heard someone received the death penalty and you said,  
5 well, that doesn't sound right; doesn't appear to me the  
6 person ought to receive the death penalty for that type  
7 of case. Heard any case you would disagree with?

8 A. I never heard a case I disagreed with the death  
9 penalty.

10 Q. Did you ever follow the Carla Faye Tucker case?  
11 You know, it was -- she was convicted of capital murder  
12 here in Harris County. It's often referred to as the  
13 "pick axe murder."

14 A. Yes, I remember that.

15 Q. She had this religious conversion and asked for  
16 a pardon from the governor at the time her execution  
17 came up, and the governor refused to do so. Did you  
18 have an opinion on that case as to whether or not she  
19 should have received some type of commutation?

20 A. I was glad she did not receive a pardon.

21 Q. Okay. You are a teacher at Pasadena I.S.D.  
22 and, I guess, a teacher throughout Cy-Fair, Spring,  
23 also?

24 A. Yes.

25 Q. And I saw how one of your degrees, anyway, is

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1 in special education?

2 A. Right.

3 Q. Cy-Fair, at least, you taught high school age,  
4 special ed students. Is that what you currently do in  
5 Pasadena or --

6 A. No. In Cy-Fair, those were emotionally  
7 disturbed high school, and this is a regular high  
8 school. I'm a home economics teacher.

9 Q. So you're back in a regular classroom?

10 A. Yes, the regular classroom.

11 Q. In dealing with the emotionally disturbed  
12 students at Cy-Fair, what courses did you teach? Did  
13 you teach a whole curriculum of courses, or how did that  
14 work? When did you have them?

15 A. We had a self-contained ten to twelve students.  
16 They were self-contained. We had them all year. We  
17 taught them all their high school courses. Because of  
18 their illness, they're emotionally disturbed, they need  
19 to stay in that room. And we were trained to deal with  
20 those type of children; so, we taught them all their  
21 courses, like science and math.

22 Q. Now by emotionally disturbed, are you talking  
23 about people with psychiatric-type problems or also  
24 people with environmental-type problems that may have  
25 brought on this emotional instability?

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1 A. They were labeled emotionally disturbed,  
2 because they couldn't function and learn in a regular --  
3 in a learning environment. They had -- they did have  
4 environmental problems, like drug use, abusive parents,  
5 and prison.

6 Q. Right. So, they were somewhat disciplinary  
7 problems, as well, I assume?

8 A. Yes, they all had -- or most had -- I shouldn't  
9 say all, but some of them had violent behavior.

10 Q. All right. There was a question in here, it  
11 says that anyone can overcome a neglectful or abusive  
12 childhood; and you say you generally disagree. Was that  
13 based somewhat on that experience, or why did you  
14 generally disagree that someone cannot overcome a  
15 neglectful childhood?

16 A. This is based on -- we have a lot of  
17 conferences with psychologists over our students, and  
18 there were some cases where we had students that the --  
19 that's what the psychologist said, that, you know, there  
20 are certain ages, sometimes they can't be turned around.  
21 For instance, one of our students was raised in L.A., in  
22 a gang environment. And they said he was sixteen now  
23 and -- well, that was -- I'm taking the opinion of the  
24 psychologist. He -- there are some cases that cannot be  
25 turned around.

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1 Q. And obviously, you could hear from  
2 psychologists in a case like this. Would you always  
3 just accept what the psychologist has to say as being  
4 true; or would you be able to examine that and say,  
5 well, I'm not sure?

6 A. I would have -- yeah, I took his as being  
7 general; so, I would have to look at the individual.

8 Q. Okay. There is a question about, Do you  
9 believe that teenagers and young adults change as they  
10 grow older? And you say, I think they can change if  
11 circumstance and the right support are available, but  
12 there are some teens who cannot change after a certain  
13 age. Depends on how they were raised, and their  
14 backgrounds, and was that opinion based upon just what  
15 that psychologist said or based upon some of your  
16 experiences in dealing with these children?

17 A. It's based on some of my dealings with students  
18 and their follow-up.

19 Q. So, did you ask to follow up with the students  
20 after they may have left your school and followed up  
21 what they had done later?

22 A. Yes, uh-huh.

23 Q. Question about, Do you have any religious,  
24 moral, or personal beliefs that would prevent you from  
25 returning a verdict which would result in the execution

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1 of another human being? And you said, No, but then put,  
2 Not if I was certain the person committed the crime and  
3 the law required the punishment. You underlined the  
4 word certain.

5 Of course, you know now, after the Judge's  
6 voir dire, or may have known before that, the burden of  
7 proof is on the State. We must prove our case beyond a  
8 reasonable doubt. Do you also understand we can -- our  
9 burden is not to prove the case beyond all doubt or to a  
10 one hundred percent certainty?

11 A. Yes, I understand that.

12 Q. Because I don't think I could ever prove  
13 anything beyond all doubt unless you were a witness in  
14 the case. And if you were a witness, you couldn't be a  
15 juror in the case. So, you'll be given a definition of  
16 beyond a reasonable doubt by the Court. And I assume  
17 you would be able to follow that and make your  
18 decisions?

19 A. Yes. I still -- I understand the definition of  
20 beyond a reasonable doubt.

21 Q. Okay. All right. Have you ever been on a jury  
22 before?

23 A. No.

24 Q. Okay. You indicated you had read an article in  
25 the newspaper about what crimes are given the death

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1 penalty. Anything about that article that affected your  
2 opinion about the death penalty?

3 A. No, it just -- I can remember reading that it  
4 talked about crimes that were committed along with  
5 another crime, and it listed some of them. And I had  
6 just never seen that written down before.

7 Q. Okay.

8 A. I had just learned more information.

9 Q. Right. I think you said your niece's husband  
10 is a highway patrolman. Do you ever have much  
11 interaction with him?

12 A. No. I rarely see him. In fact, they just  
13 recently been married.

14 Q. It says a niece is a probation officer. Do you  
15 have much contact with her about her job?

16 A. I have some contact with her, but her job is  
17 never discussed.

18 Q. Okay. Do you have any doubt about your ability  
19 to participate in a process whereby you would be called  
20 upon to make a decision; in other words, to answer these  
21 questions, knowing that in doing so, in participating in  
22 that process, could result in this Judge ordering the  
23 execution of the defendant sitting over there on trial?  
24 Do you have any doubts about your ability to participate  
25 in that type of process and make that type decision if

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1 that's what the law and the evidence called for?

2 A. I don't have -- you're saying, do I doubt my  
3 judgment or --

4 Q. Some people come in and say, I believe in the  
5 death penalty; but hey, I could never sit and make that  
6 type of decision?

7 A. I believe I could judge based on facts -- I  
8 think I can make a decision based on the background and  
9 the facts of the case.

10 Q. Facts and evidence?

11 A. And the evidence.

12 Q. You have not heard anything about this case, I  
13 assume?

14 A. No. I didn't even recognize the name or  
15 anything.

16 Q. Now, the Court told you, and I just kind of  
17 want to go over it briefly and make sure you understand  
18 what we're talking about. Two parts to the trial, if  
19 you will. First part is guilt/innocence. The burden is  
20 on us to prove that on a certain date, in Harris County,  
21 Texas, the defendant took the life of a certain person  
22 in the course of kidnapping or killed two more people  
23 during one criminal episode. You can prove either one.  
24 Jury would return -- beyond a reasonable doubt -- jury  
25 would return a verdict of guilty of capital murder.

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1 They don't have to choose which. Six people could think  
2 it's kidnapping/murder. Two people could think it's  
3 killing two people in one criminal episode.

4 If you find a person guilty of capital  
5 murder, then you go to the punishment stage of the  
6 trial. There you may hear evidence about a defendant's  
7 character, background, criminal history, or the lack  
8 thereof, mental acts or disabilities, the kind of life  
9 they grew up in, to kind of know about their social and  
10 economic and other type of backgrounds they have.

11 And then you're going to be asked to use  
12 all that evidence, both the punishment stage evidence,  
13 as well as the guilt/innocence evidence in answering  
14 these questions. And Number One asks you if there is a  
15 probability that that person would be a continuing  
16 threat to future acts of violence. Doesn't say a  
17 certainty. Doesn't say it's a possibility. Anything is  
18 possible. They use probability, more likely than not.  
19 If you believe that's what the evidence shows beyond a  
20 reasonable doubt, you answer, Yes.

21 What kinds of information you think is  
22 helpful in determining whether or not you believe a  
23 person would be, to a probability, a continuing threat  
24 to commit future acts of violence?

25 A. Well, the character and their background. I

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1 think even -- I was trying to think of a case like that  
2 when he was talking to us earlier. I think even if  
3 their age -- if they were eighty years old when this  
4 happened, you know, life sentence, that's forty more  
5 years. I was thinking even the simple fact of an age  
6 could affect that second question.

7 Q. Well, I guess the fact it could affect either  
8 one. You may think they were a little too old to be a  
9 continuing threat anymore to commit future acts of  
10 violence.

11 And then the second question asks if there  
12 is any reason based -- tells you to look back at the  
13 evidence, the crime, the defendant's character and  
14 background, their personal responsibility for the  
15 commission of the crime, and if you find there are any  
16 mitigating circumstances -- what I like to refer to as  
17 reasons -- why this person ought to receive life as  
18 opposed to death. Gives you an opportunity to look back  
19 through all the evidence and say, is there some reason  
20 this person's life ought to be spared? Because when you  
21 get to that question, you would have already found  
22 they're guilty of capital murder. You've already found  
23 they're a continuing threat to commit future acts of  
24 violence. And now you're trying to say, is there any  
25 reason why this person ought to have his life spared in

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1 a life sentence versus death?

2 So, you go back and look at all that  
3 evidence to see if there is anything there to prevent  
4 you -- if there is, you would answer that question yes,  
5 or you would receive a life sentence. If you find there  
6 is not anything sufficient, you change your vote from  
7 death to life, or you answer it no and the defendant  
8 will receive the death penalty. Any problem with that  
9 question or that aspect?

10 A. No, no problem.

11 Q. Do you want to go back and look through all of  
12 that?

13 A. Yes, I think it would be necessary to go back  
14 and look through the evidence.

15 Q. Anything that comes in your mind that you  
16 think, well, if I heard evidence of this, whatever that  
17 might be, that would, in my mind, always be mitigating.  
18 In other words, you could always give me at least a  
19 reason to give this person life as opposed to death.  
20 Anything that comes to your mind and says, well, if I  
21 heard this, that would always be a bell ringing for me  
22 to say this person ought to get a life sentence.

23 A. I can't think of anything now, except for that  
24 age thing.

25 Q. Okay. All right. And in looking at this type

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1 of information, you go back and you can consider, one  
2 juror might say, because of the age of a person, I think  
3 it's going to be a mitigating factor, you know. It's a  
4 reason to give that person life as opposed to death.

5 Somebody else on the other side may say, I  
6 don't think that has any effect at all. I know lots of  
7 people, whatever the age may be, they don't commit  
8 capital murders. I don't think age has anything to do  
9 with it. You know, I think one thing that I would  
10 suggest to you would be -- in an appropriate way of  
11 viewing it -- would be if someone said, well, because  
12 you know that life sentence means forty years day for  
13 day, if you factor that in and say, okay, he's a certain  
14 age -- let's say he's fifty years old. He's going to go  
15 forty years day for day. He's going to be ninety; so  
16 I'm going to give him life as opposed to death, because  
17 there is not any difference. That would be, I suggest,  
18 an inappropriate way of using that. I don't think that  
19 fits into answering any of those questions; because  
20 those questions determine, is he a continuing threat?  
21 And it doesn't matter. He might be for the next --  
22 doesn't say he was a continuing threat after he gets out  
23 after forty years. Doesn't say that. It says as he  
24 sits -- basically, I suggest to you, my interpretation  
25 is as he sits there that day.



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1 A. Okay.

2 Q. Can you assure me that that fact, a person  
3 would serve forty years day for day in a life sentence  
4 wouldn't be a factor you would then factor in to answer  
5 the questions?

6 A. Ask me that again.

7 Q. If knowing -- in other words, if somebody says,  
8 I know --

9 A. Would I use that -- I can assure you -- you're  
10 saying -- I just need to repeat this for myself. Are  
11 you asking me would I use that age thing?

12 Q. The fact a person would do forty years day for  
13 day is something the Court has told you if they get a  
14 life sentence. The only way that can be considered in  
15 answering those questions is to already know the answer  
16 to one of the questions, and then --

17 A. Yes, I understand what you're saying, yeah,  
18 that wouldn't be the right thing.

19 Q. Any questions you have of me?

20 A. No.

21 Q. All right. Thank you very much?

22 MR. MCCLELLAN: And I'll pass.

23 THE COURT: Thank you.

24 Mr. Hill?

25 MR. HILL: And I thank you, Judge.

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1 get twelve people. People come from all different walks  
2 of life, have different feelings about different issues.

3 It's incumbent upon us to try to find out  
4 any issues that you might feel, either if they're ones  
5 that the State wants to know about you or the defense  
6 knows about before we sit you on the jury; because it  
7 does no good if we don't ask you the questions and you  
8 sit on the case and then you figure out for the first  
9 time, oh, gosh, I wish I had mentioned something to  
10 those guys; because this is really important for them to  
11 know about you, okay?

12 So, if there is anything you can think of  
13 at the outset that I should ask you or that you would  
14 like me to know that you think is important to the case,  
15 please do so. Anything at all that you can think of?

16 A. You mean, about this case in particular?

17 Q. This case, maybe feelings that you have about  
18 criminal cases in general, the death penalty in  
19 specific. Anything, at all that you can think of that  
20 you think me, sitting here as a defense attorney  
21 representing a man that's charged with capital murder,  
22 should know?

23 A. I can't think of anything right now.

24 Q. If you think of something, let me know. You  
25 made several comments in response to Mr. McClellan's

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# VOIR DIRE EXAMINATION

1 BY MR. HILL:

2 Q. Hi, Miss Stephens. My name is Wayne Hill.  
3 Kurt Wentz and I both represent Mr. Mamou in this case.  
4 I'm going to sit up here, because that ledge gets in the  
5 way. And I just want to talk to you a little bit, take  
6 a few minutes to go over some things in your  
7 questionnaire. Obviously, the State has had an  
8 opportunity to visit with you and find out some thoughts  
9 that you have.

10 I am going to ask you some questions, and  
11 I want to let you know fairly ahead of time that there  
12 might be some questions that I ask that go into some  
13 things on the questionnaire. And I don't mean to make  
14 you feel uncomfortable or feel like we're picking on  
15 you. That's why we do these individual voir dire  
16 outside the presence of everybody else. It gives us an  
17 opportunity to ask you some questions.

18 If there is a question that I'm asking you  
19 that you're just real uncomfortable answering, just let  
20 me know and we can decide whether we need to go any  
21 further or not. Okay? Because all I'm looking for is  
22 to, in twenty minutes, be able to figure out whether or  
23 not you should be sitting on this jury with eleven other  
24 people. We're going to speak to hundreds of people to  
25

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1 questioning you about the generally disagree with the  
2 proposition that people can overcome a bad childhood.  
3 And you said --

4 A. Well, I just meant there are some -- I believe  
5 there is some who can and then --

6 Q. Right. What did you mean by the die is cast?  
7 What does that mean?

8 A. I don't think I said those words, did I?

9 Q. Okay. I thought you said that one of the  
10 psychologists --

11 A. Oh, okay.

12 Q. That you were referring to kind of "the die is  
13 cast and they can't be turned around" were the phrases  
14 that I noted down here. And I may be paraphrasing a  
15 little, but what does that mean?

16 A. It means that he'll always be a threat to  
17 society. That was my interpretation.

18 Q. Does that necessarily mean that that person's  
19 childhood should not be even considered when it comes to  
20 the punishment stage of a capital murder trial? In  
21 other words, if you also know a person is going to be a  
22 threat to society, in all fairness, would it make any  
23 difference what the person's childhood was like, you  
24 know, whether they had a good childhood or bad  
25 childhood? Should that make any difference to a jury's



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1 evaluation of whether or not to assess the death penalty  
2 or life in prison?

3 A. Oh, I think that we couldn't decide whether  
4 that would be the case beforehand. You would have to  
5 look at -- is that what you're asking me?

6 Q. Right.

7 A. I don't think you decide about any person  
8 unless you looked at all the evidence --

9 Q. Okay.

10 A. -- and their past character.

11 Q. Are you of the opinion --

12 A. And I wasn't saying that that was just a  
13 general statement that there may be -- it's possible, I  
14 think.

15 Q. Okay. What is your impression of a statement  
16 that if a person is found guilty of intentionally taking  
17 a life of one or more persons in the same criminal  
18 transaction? In other words, they intend to kill two  
19 people and they do so, and you further find after  
20 evaluating the evidence that that person is going to be  
21 a continuing threat to society? Is there really any  
22 circumstance that would cause you to feel that a life  
23 sentence would be appropriate for that type of person?  
24 Or in all fairness, do you in all fairness feel like  
25 there could never be any mitigating circumstances that

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1 would cause you to feel that a life sentence is the  
2 appropriate answer?

3 A. Oh, I believe there could be mitigating  
4 circumstances.

5 Q. I believe Mr. McClellan even asked you, he  
6 said, What evidence would be helpful in answering the  
7 first question? And then he said, Is there any evidence  
8 that would automatically cause you to answer Number Two  
9 yes?

10 I'd like you to tell me what type of  
11 evidence you, as an individual juror, would find helpful  
12 in evaluating Question Number Two and arriving at an  
13 answer. What type of evidence would be important for  
14 you to know about the case or the defendant before  
15 deciding whether that person should receive life or  
16 death?

17 A. And that's after we've already decided that he  
18 is a threat?

19 Q. Uh-huh.

20 A. Or she's a threat?

21 Q. Yeah, because you wouldn't get to that question  
22 if you hadn't already found them guilty beyond a  
23 reasonable doubt. You already found beyond a reasonable  
24 doubt he's going to be a threat to society. Now you're  
25 deciding life or death. So what type of factors --

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1 because really at that point, you're a step away from  
2 assessing the death penalty. That Question Number Two  
3 is only going to cause you to say, well, we're going to  
4 go back to life. We're just going to go life instead of  
5 death. So, I guess I'm looking for the type of factors,  
6 the type of evidence that would be helpful for your  
7 evaluation of a life sentence.

8 A. Okay. Threat to society could be acts of  
9 violence that are not even to do with murder; is that  
10 correct?

11 Q. That's correct.

12 A. Well, that could factor in if I felt that he  
13 wouldn't or she wouldn't commit murder, but other acts  
14 of violence, you know, maybe like if they were just, you  
15 know, not serious as that. That could be.

16 Q. That really goes to Question Number One.

17 A. Oh, it does.

18 Q. Question Number One asks you do you believe  
19 this person is going to be a continuing threat to  
20 society? You've already gotten past that question.  
21 You've already answered it, yes, I believe that person  
22 is going to be a threat.

23 A. Okay.

24 Q. So my question is, what type of evidence would  
25 you want to hear? What type of evidence would be

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1 helpful as you sit there saying, I'm either going to  
2 decide he receives a death penalty or life? And we  
3 already know that the only thing that's going to happen  
4 to remove the death penalty is for you to find some  
5 mitigating evidence or mitigating circumstance or  
6 circumstances to, in your mind, justify life over death  
7 for that person.

8 And I'm trying to get a feel for if there  
9 was some evidence you would like to hear that would help  
10 you answer that question, knowing you've already found  
11 the person guilty beyond a reasonable doubt of capital  
12 murder, knowing you've already found beyond a reasonable  
13 doubt he's going to be a continuing threat to society.

14 A. Okay. As I understand it, to answer Question  
15 Number Two, you have to look back over the actual crime  
16 itself, plus their background, plus their character.

17 Q. But is there something in particular of those  
18 circumstances that would be especially important for  
19 you, personally? What would be a deciding factor, if  
20 there is one, that would say to you life over death? Is  
21 there some overriding issue in a case that would pretty  
22 much sum it up for you?

23 A. To be honest, I don't know. I would have to  
24 look. I don't know.

25 Q. Why didn't you think that it was a good idea

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1 for Carla Faye Tucker to get a pardon? When  
2 Mr. McClellan asked you that question, he said, Did you  
3 feel like that was a good decision? You said it was  
4 good she didn't get a pardon. And I guess I wanted to  
5 kind of talk with you a little bit about why you felt  
6 that way.

7 A. Because I think because of the nature of the  
8 crime, and no one knows for sure if she really had this  
9 change. You know, it could be in her mind she could  
10 have that change. But what if she didn't really, you  
11 know? And I wouldn't want to change the decision;  
12 because I think it's important to keep the first  
13 decision and not get pardoned, because that sets a  
14 precedent for other cases.

15 Q. Do you think people are incapable of change?

16 A. I think it's possible they can change.

17 Q. Are you suspicious of the fact that maybe this  
18 was all made up on her behalf to try and gain favor and  
19 sympathy?

20 A. I was suspicious.

21 Q. So I take it if you had been governor for the  
22 day, you would have done the same thing that Governor  
23 Bush did in denying a pardon?

24 A. Yes.

25 Q. Okay. You made a comment in answering one of

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1 argument against it; because other than that argument, I  
2 couldn't think of another argument against it. I mean,  
3 I'm trying to be honest in saying that.

4 Q. Okay. What about the -- and this is one of  
5 those areas where I kind of hesitate a little bit; but I  
6 want to ask, you said that you -- you had asked about a  
7 divorce and talked about an emotionally abusive  
8 situation. Did that spill over at all onto the kids?

9 A. Yes.

10 Q. Okay. How was that reflected? I mean, were  
11 any of the children -- did they require any kind of  
12 counseling or anything like that to get through that?

13 A. Yes, we did.

14 Q. Do you feel like that has left its mark on any  
15 of the three children, even to this day?

16 A. Yes.

17 Q. Okay. Is that reflected in perhaps how they --  
18 are any of them -- are you a grandmother yet?

19 A. Yes, uh-huh.

20 Q. Do you see anything they're doing with their  
21 own children that reflects the impact that that had on  
22 them? In other words, that they've learned perhaps from  
23 that situation and not repeating it? Because I'm  
24 assuming when you say the emotionally abusive situation,  
25 that had to have a negative effect on them. I assume as

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1 the questions on the questionnaire. It asked you your  
2 feelings about, do you have any religious, moral, or  
3 personal beliefs that would cause you to return a  
4 verdict or have problems returning a verdict of guilt or  
5 innocence for somebody being accused. And you said, Not  
6 if I was certain the person committed the crime, which  
7 is what Mr. McClellan asked you.

8 And then it said, And the law requires the  
9 punishment -- do you understand the law doesn't require  
10 any particular punishment in a case like this? That's  
11 up to the jury to decide? You're not going to have any  
12 set punishment that the law says you must assess, other  
13 than life or death. But it's not, if you find these  
14 factors, it will always be life or it will always be  
15 death. You're going to have to make that decision.

16 A. I understand that now, yes.

17 Q. Okay. In your opinion, what is the best  
18 argument against the death penalty?

19 A. The moral code of "Thou Shalt not kill."

20 Q. You're meaning that from the perspective of a  
21 juror, you're concerned that you may not have that  
22 authority, the moral authority to take another person's  
23 life? I'm trying to interpret what you meant by that.

24 A. You know, I remember that was a hard question  
25 to answer. That's all I could think of is the best

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1 they were younger, it had more of a negative than a  
2 positive effect on them?

3 A. Yes, and do I see that coming out with the way  
4 they're taking care of the children?

5 Q. Right. In other words, have they learned that  
6 perhaps?

7 A. One of them has learned to yell at her child.  
8 I think she -- I believe that's where she got the  
9 yelling at the child. But that's the only thing that I  
10 see evidence.

11 Q. Okay.

12 A. And the only other evidence I see from my  
13 children is they do not have good judgement in choosing  
14 mates, because -- and I don't know if it's because they  
15 had an abusive father or -- but I think they're getting  
16 better.

17 Q. How would you feel sitting on a case like this?  
18 Is that a -- are you comfortable having to sit and judge  
19 a case of this magnitude; or do you feel like it would  
20 make you feel uncomfortable, make you uneasy to have to  
21 sit in judgment of somebody with this type of case?

22 A. I think that I would feel okay with doing it.  
23 I would just know that going into it, it would be  
24 something very important. It's a major decision, and I  
25 would be very careful and consider everything.

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1 Q. One thing that you put in there was that you  
2 believe that drugs causes a person to commit crimes.

3 A. Yes.

4 Q. Not that it excuses their conduct; but that you  
5 see a direct correlation between somebody that is on  
6 drugs, in that drug culture, versus somebody that's not?

7 A. Yes, I believe that sometimes even if there is,  
8 you know -- of course, we all -- I think we all have the  
9 possibility to commit crimes. I think drugs, some  
10 people might give them -- you know, they have more  
11 courage, or I don't know what to say. They just don't  
12 have good judgment during that time when they're under  
13 the drug, the influence.

14 Q. Do you think that whole drug culture can make a  
15 deep impact on somebody and how they look at society and  
16 the rules that everybody else lives by?

17 A. Or maybe --

18 Q. Do you think they view things differently?

19 A. Yes, and I believe that maybe that's why  
20 they're in that culture; because maybe they already view  
21 it differently.

22 Q. Okay.

23 A. I'm not sure.

24 Q. Who is your friend in the D.A.'s Office in Fort  
25 Bend?

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1 A. His name is -- I know him through my boyfriend,  
2 so hang on. I'll think of his name in just a second.

3 Q. That's okay.

4 A. For some reason, it's not someone I see a lot,  
5 but we see him socially.

6 Q. My only --

7 A. Glen. It's Glen something.

8 Q. Glen Cook?

9 A. It might be.

10 Q. Yeah, little husky, tall?

11 A. Oh, very husky.

12 Q. Yeah. He used to work in my office. He used  
13 to be in the D.A.'s Office.

14 A. His wife is expecting twins now.

15 Q. Yeah?

16 A. Yes.

17 Q. Well, I don't know if they're expecting twins.

18 A. Yes, they are. And I hope that's not a secret.

19 Q. I won't tell if you don't. The last question  
20 is -- we look at these questionnaires. We try to pick  
21 up on things that might signal to me, as a defense  
22 lawyer, to be concerned, be wary of the fact that maybe  
23 there are some things that you need to visit with the  
24 juror about.

25 And I'd ask you whether or not you ever

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1 felt uncomfortable with the prospect of being  
2 victimized, breaking in while you're at home. And you  
3 specifically said the possibility of, like, a sexual  
4 assault. Has there ever been a situation where that's  
5 been an issue for you, or just the overriding concern  
6 that that personal invasion and somebody breaking into  
7 your home and something like that -- has there ever been  
8 a personal experience that we should be aware of --

9 A. No, sir.

10 Q. -- as to why you answered that question?

11 A. I think that's just a fear that women have,  
12 even though I know that it did happen to my daughter;  
13 but only it was more like a date type of thing.

14 Q. You're the only one that can answer this  
15 question, and there is no right or wrong answer.

16 A. Okay.

17 Q. But I want you to understand that the  
18 indictment in this case alleges Mr. Mamou abducted a  
19 woman and caused her death. Okay. And only you can  
20 tell us whether or not there is anything that strikes so  
21 close to home that if you're, for even a minute, are  
22 going to feel like, you know, maybe I'm not comfortable  
23 and maybe I couldn't really fairly judge a case like  
24 this because I'm going to think back to my daughter's  
25 situation, we just need to know that. And whatever your

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1 answer is is fine, but we just want to make sure we know  
2 what it is before we evaluate whether we place you on  
3 the jury or not. How do you feel about that? Do you  
4 feel like there would be some concern about you being  
5 able to presume him innocent, knowing the nature of the  
6 allegation against him and maybe looking back on the  
7 situation that your daughter experienced?

8 A. Well, I can see right now it's not the same  
9 situation at all.

10 Q. Okay.

11 A. So --

12 Q. So your answer would be that you don't have a  
13 problem?

14 A. I don't have a problem.

15 Q. Or you feel like that's not something --

16 A. I don't feel like that's connected.

17 Q. And I can rely upon that, and so can the State?

18 A. Yes.

19 Q. That neither one of us have to think while  
20 you're back there deliberating the case that all of a  
21 sudden, thoughts are going to go through your mind that,  
22 you know, my daughter experienced a situation with a  
23 man, anything along those lines?

24 A. No, there is no problem with that.

25 Q. Was there anything else you wanted to say? I'm

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1 not trying to cut you off. I just want to know --  
 2 because you're the only person that knows. Is there  
 3 something inside, anything at all, that you need to tell  
 4 the Judge or us about you or about experiences that  
 5 really, when you really have to examine yourself  
 6 inwardly you say, You know what? I can't be fair on  
 7 this case. Not because I'm not a good person; but I  
 8 have a strong feeling as to a particular issue, and I  
 9 might not be so suited to sit and listen to this case?

10 A. I think I could be fair.

11 Q. Do you have any questions of me?

12 A. No.

13 Q. Okay. Thank you.

14 THE COURT: Thank you, sir.

15 Miss Stephens, in just a second I'm going  
 16 to excuse you. Before I do, I will tell you that we  
 17 want you back Wednesday, the 29th, being two weeks from  
 18 tomorrow. We are talking to folks individually for the  
 19 purposes of creating a pool or a panel of about  
 20 forty-eight people, everybody, every single one of whom  
 21 have been exactly through what you've been through.  
 22 We'll get everybody back on the 28th, start at 9:30, be  
 23 through by noon. When we're through on the 29th,  
 24 everybody will leave here knowing definitely whether  
 25 they are or are not on the case.

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1 Between now and then, don't alter your  
 2 life one bit for us. Do your business thing like you  
 3 would do. Do your personal thing just like you would  
 4 do. If you have a chance to leave town, take the chance  
 5 and go. All that we ask of you between now and the next  
 6 time we see you is this: Please do not talk about this  
 7 case with anybody. Please do not permit anybody to talk  
 8 about this case with you. If there should be any news  
 9 media treatment about the case between now and when we  
 10 get together next, avoid it. Anything about the case on  
 11 the television, refuse to watch it. Newspaper, refuse  
 12 to read it. Radio, refuse to hear it.

13 The reason, Ms. Stephens, for each of  
 14 those five restrictions is to attempt to accomplish the  
 15 same goal. And that is this: If you do become a juror  
 16 in the case, the decision that you reach, whatever it  
 17 winds up being, has got to be based exclusively upon the  
 18 information you received from within the courtroom.  
 19 Cannot in any way be affected or influenced by any  
 20 outside of the courtroom information, so that's why we  
 21 try to keep you away from all that stuff.

22 If you need something for the folks to  
 23 show them where you have been for the three days you  
 24 have been with us, that will take care of that. This is  
 25 a reminder note as to the where and when we want you to

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1 be back, which is right back out here where you were  
 2 this morning, by 9:30. Before you leave, have you any  
 3 questions?

4 VENIREPERSON: No.

5 THE COURT: Thank you very much. You are  
 6 excused. See you in a couple of weeks.

7 DAMIETTA L. LANDRY,

8 having been first duly sworn, testified as follows:

9 VOIR DIRE EXAMINATION

10 BY THE COURT:

11 Q. Miss Landry, first off, let me ask you this:  
 12 You remember back yesterday and all the things we talked  
 13 about? Add to it this morning and the things we talked  
 14 about. Out of everything that we have talked about so  
 15 far, do you have any questions at all from me?

16 A. No.

17 Q. Is there anything to this point we have not  
 18 talked about, touched on, that you think we ought to  
 19 talk about because it might have some bearing on your  
 20 ability to be a juror in this case?

21 A. The only question was the last question, that I  
 22 feel like I might know some of the family members.

23 Q. Okay. The family members of who?

24 A. I think it would be the Carmouches', because  
 25 that's not a common name.

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1 Q. I understand. Well, let's talk about that.  
 2 Let's just assume that during the course of the trial,  
 3 family members do testify. May very well be that one of  
 4 them you do know. Let's assume that you do. How would  
 5 that affect your ability to be a fair juror in this  
 6 case? Would it have an effect?

7 A. No, I don't think so.

8 Q. Do you know the family members -- is your  
 9 relationship with them, whoever they might be, assuming  
 10 they are within the same family; we don't know that --  
 11 but is your relationship or your association with them a  
 12 close relationship?

13 A. No.

14 Q. Just more of an acquaintance than anything  
 15 else?

16 A. More of an acquaintance.

17 Q. Don't socialize?

18 A. My daughter may have attended a birthday party  
 19 once several years ago.

20 Q. All we can do is inquire, Miss Landry, because  
 21 you're the one who possesses all the information that  
 22 we're receiving.

23 A. Right.

24 Q. And the information we're seeking is this: If  
 25 it were to be you did know one of the family members,



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1 would that in any way interfere with your ability to be  
2 a fair juror to each side --

3 A. No.

4 Q. -- to evaluate the testimony as you heard it  
5 and come up with what you think is the right result?

6 A. No, it wouldn't.

7 Q. Is there anything at all, Mrs. Landry, whether  
8 it be something about your personal belief or something  
9 about your professional life, whether it be something  
10 about your health or something else unrelated that you  
11 can think of that in any way might interfere with your  
12 ability to be a juror in this case during the time frame  
13 that we talked about?

14 A. No.

15 Q. In terms of these rules that we have spent some  
16 time yesterday and today talking about, is there  
17 anything that we've touched on about which you find you  
18 have no disagreement?

19 A. No.

20 Q. So if any of these rules did come into play, as  
21 a juror, you could both follow, as well as enforce them?

22 A. Yes.

23 Q. I think another aspect of this phase of the  
24 trial is meant for you, as a prospective juror, to  
25 satisfy yourself, for the defense to be satisfied with

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1 in some cases. It's not something that I would do in  
2 all cases. It just depends on the circumstance.

3 Q. All right. What kind of cases come to your  
4 mind when you think of cases where you think the death  
5 penalty ought to be available as one of the forms of  
6 punishment?

7 A. Mass murderer, serial killers, people who just  
8 kill with no thought. I mean, they have no thought --  
9 no value of human life. They just kill to kill.

10 Q. Right, okay. Obviously, Oklahoma City bombing,  
11 something like that, might come to mind. Obviously,  
12 this is not that type of case. A person could also,  
13 though, kill just to kill, and kill four people and not  
14 be -- you know, not be a mass murderer. The quantity of  
15 people, I guess killed, does that play a factor to you?

16 A. It would be the intent.

17 Q. Attitudes and why they did it, right?  
18 Disregard for the life when they're doing it?

19 A. Right.

20 Q. There is a question in here about your opinion  
21 concerning the death penalty. And it says, What are  
22 your feelings about the death penalty? And you said, I  
23 personally do not believe I could take a life, but I  
24 believe the punishment should fit the crime. Now I --  
25 can you tell me what you meant by saying that?

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1 themselves, that if you were a juror in the case, you  
2 would just simply sit back in those chairs and listen to  
3 all the testimony that's presented, evaluate however you  
4 see fit, and come up with what you think is the right  
5 result to reach based upon the evidence in the case.  
6 Does that sound like you?

7 A. Yes.

8 Q. Before we begin, do you have any questions for  
9 me?

10 A. No.

11 THE COURT: Mr. McClellan.

12 MR. MCCLELLAN: Thank you, Your Honor.

13 VOIR DIRE EXAMINATION

14 BY MR. MCCLELLAN:

15 Q. My name is Lyn McClellan. Along with Claire  
16 Conners, we represent the State of Texas in this case.  
17 I want to go over your questionnaire and follow up on  
18 some of your answers there. I want to talk to you about  
19 certain aspects of the law that might apply in a case  
20 like this and get your feel for how you think those  
21 work, whatever.

22 But first of all, just let me ask you  
23 this: Can you tell me just in your own words what you  
24 think about the death penalty?

25 A. Personally, I think the death penalty is needed

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1 A. I don't think I could be the person that sat  
2 there and gave the lethal injection. Or given the  
3 circumstances, I don't think I could personally kill  
4 someone.

5 Q. Like self-defense?

6 A. Self-defense kind of situation, but I believe  
7 the death penalty is reasonable in some cases.

8 Q. All right. Do you have any doubts about your  
9 ability to participate in a process whereby you might  
10 serve as a juror, listen to the law, and be given  
11 questions to answer, knowing that the answers that you  
12 give may well result in this Judge -- or in the  
13 execution of the defendant sitting over here on trial?  
14 Do you have any doubts about your ability to participate  
15 in that type process and make that type of life and  
16 death decision, if that's what the law and the evidence  
17 called for?

18 A. No.

19 Q. Could you do that?

20 A. I could do that.

21 Q. Has there ever been a period of time in your  
22 life where you opposed the death penalty, thought you  
23 shouldn't have it, immoral, against my personal,  
24 religious, philosophical beliefs; just ought to be  
25 something that should be done?



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1 A. Maybe when I was a lot younger, maybe in my  
2 twenties, college years.

3 Q. How did you come about going to college in  
4 Massachusetts and then to Oklahoma and Kansas?

5 A. My history teacher's wife went to Smith, and so  
6 he sold me on going to Smith.

7 Q. I assume you're a teacher then?

8 A. Teacher got me into it; and then I married a  
9 person in the Army, and that's how I ended up at Fort  
10 Sill and Fort Riley.

11 Q. That's where you started your tour of the  
12 United States?

13 A. Right.

14 Q. Now you also mentioned in your questionnaire  
15 that you have a cousin who had been shot?

16 A. Yes.

17 Q. Can you tell me something about that?

18 A. I really don't remember a lot about it, because  
19 I was young.

20 Q. Okay.

21 A. But they were -- I want to say it was at a  
22 party or something, and they may have been playing  
23 Russian Roulette.

24 Q. Was this cousin older than you were?

25 A. Yes, yes. I was probably somewhere between

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1 circumstances really were of the situation; so, sir, it  
2 could be and then it couldn't be.

3 Q. Right.

4 A. Because I don't know any details. I don't even  
5 know if they went to court in the first one.

6 Q. Right, okay. You say both of these have  
7 occurred over the last two years?

8 A. One was about three weeks ago, and then the  
9 other one was probably about two to three years ago.

10 Q. All right. The one two weeks ago was the one  
11 where the guy was found?

12 A. In his home shot, uh-huh.

13 Q. There is a question about, anyone can overcome  
14 a neglectful or abusive childhood. You said you  
15 generally agree with that.

16 A. Yes.

17 Q. What do you think is required in order to do  
18 that, to overcome an abusive or neglectful childhood?

19 A. Change of environment, people in the community,  
20 citizens helping, like with the YMCA that I work for,  
21 giving them alternatives to that abusive family, places  
22 to go to get away from it.

23 Q. And what is your job with the YMCA?

24 A. I'm the executive director; so I'm management,  
25 but I supervise about thirty staff people. We run new

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1 seven and ten maybe, and the cousin was in the teens.

2 Q. Okay. All right. You also said recently a  
3 family friend's son was killed, and allegedly robbery  
4 was the motive?

5 A. Yes. And the more I thought about it, I've  
6 been in two situations like that in probably the last  
7 two years.

8 Q. Is that right?

9 A. Two of my board members lost sons. One to  
10 gambling; someone shot him over a dollar. And then  
11 recently -- the motive wasn't determined. They just  
12 found his body in his house. But according to the  
13 community, it was over gambling and drugs.

14 Q. Okay. Now this was -- these were friends of  
15 yours or people you knew?

16 A. Yes.

17 Q. Now, with either case, has anyone been charged  
18 with those crimes?

19 A. I'm not sure. I'm not sure.

20 Q. Are those the kinds of crimes people end up  
21 killing somebody over drugs or killing somebody over a  
22 dollar that you think shows a disregard for life that  
23 maybe the death penalty ought to be meritorious for  
24 their consideration or not?

25 A. I can't say, because I don't know what the

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1 sports programs, child care programs, teen outreach,  
2 that kind of thing. We collaborate with a lot of  
3 different groups in our community.

4 Q. You indicated that on prior jury service that  
5 you had been on both civil and criminal juries?

6 A. Yes.

7 Q. Do you remember what kind of criminal jury you  
8 were on?

9 A. No. It wasn't -- it wasn't capital murder.  
10 That's for sure. But it was -- it had to have been some  
11 type of robbery or theft, and they plea bargained before  
12 we got to go to trial.

13 Q. All right. So, you didn't actually hear  
14 evidence?

15 A. No.

16 Q. And is that the only criminal case?

17 A. The only one I remember.

18 Q. All right. Let me talk to you for a moment  
19 about the -- what happens in a capital murder case.  
20 Obviously, as the Court indicated to you, the first  
21 thing a jury decides is the guilt or innocence of a  
22 defendant. The Court will give you a charge, which will  
23 basically set out that the defendant was charged with  
24 having committed a certain crime in Harris County,  
25 Texas, on a certain day, killing a certain person,

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1 during the course of kidnapping or killing two or more  
2 people during one criminal episode. And both  
3 allegations are alleged.

4 The jurors' responsibility is to determine  
5 if either or both of those occurred. Jury doesn't have  
6 to agree on which of the two. Just as long as either  
7 one of them occurred beyond a reasonable doubt, the  
8 verdict would be to find the defendant guilty of capital  
9 murder, as charged in the indictment. So, six people  
10 could believe it's kidnapping, six people could believe  
11 it's two people killed in one criminal episode, or they  
12 may all believe both sides.

13 If you've found someone guilty of capital  
14 murder, then you go to the punishment stage of the  
15 trial. And the punishment stage of the trial is where  
16 you hear additional evidence that you did not hear at  
17 guilt/innocence. Guilt/innocence, you'll hear about  
18 what happened before, during, and after the commission  
19 of the crime.

20 Before the crime. Was it a spur of the  
21 moment jealousy deal, or was it a preplanned,  
22 premeditated, thought out? What happened during the  
23 course of a crime, how the person was shot or killed,  
24 whatever the manner and means of taking someone's life.

25 What happened after the commission of the

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1 anything is possible. Doesn't use the word certainty.  
2 Probability, I suggest, means more likely than not. Is  
3 it more likely than not that the defendant that we have  
4 found guilty of capital murder would continue to commit  
5 criminal acts of violence? Doesn't say another murder  
6 or capital murder. Those are obviously criminal acts of  
7 violence. Could be a murder. Could be a robbery.  
8 Could be shooting someone with a gun, didn't die. Could  
9 be hitting someone with a fist so hard you would knock  
10 them out. Anything that's criminal or violent in  
11 nature. Do you think you would be able to determine  
12 from the evidence to a probability whether someone would  
13 be a continuing threat to commit future acts of  
14 violence?

15 A. Yes.

16 Q. What kinds of evidence do you think would be  
17 helpful in making that type of determination?

18 A. Their past records, character witnesses, things  
19 that they like to do, hobbies, or just general stuff  
20 about them and what they have been doing for the past  
21 few years.

22 Q. If you found that someone was a continuing  
23 threat, to a probability, to commit future acts of  
24 violence, you answer that question yes. Then you go to  
25 Issue Number Two. At that time you would have already

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1 crime? Was the person, you know, very remorseful; or  
2 was he braggadocious, bragging to all the other people  
3 about what he had done? That kind of information is to  
4 be used in about what happened in the crime.

5 But then you also need -- you'll hear  
6 evidence about the individual at the punishment stage of  
7 the trial about his character, his background, criminal  
8 history, or lack thereof, mental disabilities, type of  
9 neighborhood he grew up in, type of school person he  
10 was, all kinds of information about the individual.  
11 Because at that stage of the trial you are determining  
12 what punishment the person ought to receive for a crime  
13 that you've already found him guilty of. Okay. And at  
14 the punishment stage of the trial, then you're able to  
15 consider the evidence that you hear there about the  
16 individual, as well as look back at the evidence that  
17 you heard about the crime itself in answering the two  
18 questions that are up there on the board.

19 First question you get is, do you find  
20 from the evidence beyond a reasonable doubt there was a  
21 probability that the defendant would commit criminal  
22 acts of violence that would constitute a continuing  
23 threat to society?

24 First of all, it uses the word  
25 probability. Doesn't use the word possibility, because

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1 decided that the person was guilty of capital murder.  
2 You've decided, in your opinion, he's a continuing  
3 threat to commit future acts of violence.

4 And now you're asked to look back at all  
5 that evidence and see if there are any reasons, what  
6 they call mitigating circumstances, as to why this  
7 person ought to receive life as opposed to death. So,  
8 you're asked to look back through that evidence and see  
9 if there is anything that gives you a reason to change  
10 your vote from death to life. If you find things that  
11 you think were sufficient to change your mind, then you  
12 change your vote and say, yeah, he should receive life.  
13 If you don't find anything sufficient to convince you of  
14 that, you don't change it and he receives the death  
15 penalty. Any problem with that aspect?

16 A. No.

17 Q. In looking at that, some people, you go back  
18 and look at all the evidence. You may have heard  
19 evidence from the trial that -- excuse me -- a person  
20 was high on drugs or alcohol when he committed the  
21 crime. One juror may say, well, I think that mitigation  
22 was a life sentence; because when you get high on drugs  
23 or alcohol, you do things you wouldn't ordinarily do.

24 Somebody else may say, well, I don't think  
25 it deserves a life sentence; because I know a lot of

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1 people that have been high on drugs or alcohol before,  
2 and they didn't go out and commit any violent crimes or  
3 capital murders. I don't see any relationship between  
4 that and the commission of a crime. I don't think it's  
5 mitigating.

6 Two people that looked at the very same  
7 piece of evidence came up with different opinions, and  
8 that's okay; because that's what the law asks you to do.  
9 is you, yourself, to review the evidence. If you find  
10 anything that's mitigating, if you think it's  
11 sufficiently mitigating to change your answer, you  
12 change your answer. If it's not, you don't.

13 Same thing about the age of a person. If  
14 you determine that the person was a young age who  
15 committed the crime, some person may say, I think that  
16 mitigates towards a life sentence. Somebody else may  
17 say, well, you know -- somebody may say it's mitigating  
18 because when you're young, you do things that you  
19 wouldn't ordinarily do, and kind of stupid. You're  
20 irresponsible. And as you get older or more mature, you  
21 make better decisions.

22 Somebody else may say, well, that may be  
23 true; but if he's already committing capital murder at  
24 that age, no telling what he'll do down the road. So  
25 they don't think it's mitigating. Again, two people

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1 look at the very same piece of evidence, come up with  
2 different opinions. Any problem with this aspect of the  
3 law, going back and looking at the evidence and  
4 determining whether or not something was mitigating or  
5 not and whether the person ought to receive either life  
6 or death?

7 A. No.

8 Q. Anything that comes to your mind that you would  
9 think and say, well, if I heard evidence of this,  
10 whatever it might be, that would always be mitigating in  
11 my mind. In other words, the thing that sticks out and  
12 says, well, if I heard that this happened, that's it; or  
13 that will always be mitigating in my mind?

14 A. No, I don't think so.

15 Q. Do you think someone who's high on drugs or  
16 alcohol and commits a crime ought to still be held  
17 responsible for the crime that they committed.

18 A. Yes.

19 Q. Okay. Do you think someone who may be less  
20 smart than you or I or normal people, but they know the  
21 difference between right and wrong? They don't have any  
22 problem about that. They just don't have maybe the  
23 mental capacity that the normal person has. Do you  
24 think they ought to be held responsible for their  
25 conduct, as long as they know the difference between

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1 right and wrong?

2 A. Yes.

3 Q. In this questionnaire this was asking you about  
4 the best argument against the death penalty. And yours  
5 is a religious one, that God is the only one that can  
6 sit in judgment. And those who are free from sin should  
7 judge none -- should judge none of us, or without making  
8 some wrong decisions. In your religion that you have,  
9 does your church have a position on the death penalty?

10 A. I suppose they do, but I can't just tell you if  
11 they're dead set against it or dead set for it. I think  
12 there is probably a balance of most of the people that  
13 attend my church, their opinions.

14 Q. Right. Let's say if you found out that the  
15 pastor of your church, though, was opposed to the death  
16 penalty after you became a juror in case like this,  
17 would that affect your ability to serve as a juror?

18 A. No, it wouldn't. But the pastor happens to be  
19 my father, so it would not matter. We differ on a lot  
20 of things, so it wouldn't matter.

21 Q. Well, that's some information I didn't know  
22 there. Where is your father a pastor at?

23 A. Mount Pleasant Missionary Baptist Church. It's  
24 in the Acres Home area.

25 Q. Landry. Okay. All right. I didn't know that.

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1 Do you have any brothers or sisters?

2 A. I have a brother who is, I want to say,  
3 thirty-three; and he's autistic.

4 Q. You mentioned that. Does he live here in  
5 Houston area?

6 A. He lives with me.

7 Q. He does?

8 A. Yes.

9 Q. Does he work outside of the home?

10 A. Yes, he does.

11 Q. Okay. Anything that you can think of that you  
12 think I should know or we should know that would affect  
13 our decision in deciding whether or not you ought to be  
14 a juror?

15 A. No, I don't think so.

16 Q. All right. You want to be a juror?

17 A. Yes.

18 Q. Okay. Why?

19 A. Because I think it's my duty. I -- the right  
20 to vote, the right to serve on a jury, those kinds of  
21 things are important to me. I think that it's a  
22 privilege. It's something everybody ought to want to do  
23 at least one time, you know, do your duty.

24 Q. Okay. Now you had mentioned -- just one last  
25 thing -- that the name Carmouche comes to your mind?

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1 A. Yes.

2 Q. It's kind of an unusual name. If you were to  
3 learn after you became a juror in the case that, in  
4 fact, the person named in the indictment with the name  
5 of Carmouche is, in fact, the person that you knew and  
6 maybe that your daughter went to her birthday party,  
7 would that keep you from being a fair and impartial  
8 juror in this case?

9 A. No.

10 Q. All right. Thank you very much.

11 MR. MCCLELLAN: I'll pass the  
12 venireperson.

13 THE COURT: Thank you.

14 Mr. Hill.

15 MR. WENTZ: Actually, it's me.

16 THE COURT: I'm sorry, Mr. Wentz.

17 VOIR DIRE EXAMINATION

18 BY MR. WENTZ:

19 Q. My name is Kurt Wentz, and Wayne Hill, and this  
20 is Charles Mamou. For the next few minutes I'd like to  
21 talk to you about you and nobody else.

22 A. Okay.

23 Q. There is a real problem we run into when we  
24 talk about jurors and we talk about defendants, and we  
25 don't really personalize them. We don't get to know

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1 during the course of a kidnapping. You may listen to  
2 the evidence and say, well, I don't see there was a  
3 kidnapping. I don't believe the defendant on trial was  
4 responsible for that murder, so you can find them guilty  
5 of something less when an allegation of two people's  
6 lives or being taken in the course of the same  
7 transaction. You may find that, yes, their lives were  
8 taken, but they weren't taken in the course of the same  
9 transaction.

10 And I know you mentioned serial murders.

11 And sometimes things may be in the back of people's  
12 minds that's linking between taking multiple people's  
13 lives and being in the course of the same transaction.  
14 That's not really what I believe the same transaction  
15 is. A serial murderer may kill somebody in Florida and  
16 go up to Ohio three weeks later and kill somebody and go  
17 to California and do it. I don't believe that's the  
18 same transaction. I think when we talk about the same  
19 transaction, it's something that happens in close  
20 proximity to one another over a short period of time.  
21 And there is a general linkage between the two, not the  
22 type of situation that I talked to you about a serial  
23 murderer. Do you see the distinction between those two?

24 A. Yes.

25 Q. One of the other things, before you even get to

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1 them. Charles is Charles, and you are you. And I'd  
2 like to know a little bit more about you, and I'd like  
3 to know about the reasons that you've answered the  
4 questionnaire the way that you did with the questions  
5 that Mr. McClellan has put to you. I'd like to find out  
6 the reasons you answered those questions in the manner  
7 that you did, so please feel free to expound upon your  
8 answers. Tell me the why, why you're answering.

9 A. Okay.

10 Q. And I think that one of the things that we  
11 sometimes skip over is the fact that we have two parts  
12 of the trial, the guilt or innocence phase and the  
13 punishment phase. Because in this type of setting, we  
14 spend so much time talking about the punishment phase;  
15 but before you can get to that, a jury has to make some  
16 important decisions on whether or not there was a  
17 capital murder committed.

18 And we're talking here about an  
19 intentional taking of somebody's life in the course of  
20 another felony. May be -- and I've always felt the real  
21 job of the juror is to define conduct. In other words,  
22 look at the conduct they've heard described to them, and  
23 determine whether or not it fits what the State says it  
24 fits. And you may find that it isn't.

25 They say there is a murder committed

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1 this punishment phase, you have to make those type of  
2 determinations. You may feel that the person is simply  
3 not guilty of the capital murder. But once you do make  
4 that conclusion, you do get to view those Special Issues  
5 and a lot of the things we've already talked about this  
6 morning.

7 Let me ask you -- you've had a lot of  
8 people close to suffer tragedies. You've talked about  
9 two. How do you think that affects you in possibly  
10 being a juror in a case like this? You've told us about  
11 two cases that are -- could, themselves, be capital  
12 murders. I don't know the general facts; but from what  
13 you told me, it's possible that they could be two  
14 capital murders you're telling us about. How do you  
15 feel, knowing about those people, knowing those people  
16 are involved, and coming to sit here possibly.

17 A. I don't think it has an effect on me, because I  
18 come across a lot of things everyday, knowing a lot of  
19 people; and I have to judge each situation on its  
20 merits, you know. The most recent situation I talked  
21 about, there was a side of his life that I didn't know  
22 anything about, and he kind of put himself in jeopardy  
23 for that, the murder.

24 Q. The one who was --

25 A. Just recently killed.



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1 Q. The gambling one or the drug one?

2 A. The one where they found him in the house.  
3 Listening to what the community people are telling us  
4 that happened in this situation, that may have been a  
5 side of the young man that I did not know. So, I can't  
6 say that it -- how I would really feel towards someone  
7 else if the same situation happened and I didn't know  
8 them, just because I don't know all the facts. And then  
9 I'm the kind of person that would have to listen to both  
10 sides, and then I decide how I feel about the situation.  
11 So even though that may be similar to this, I'd have to  
12 wait until I hear the evidence on what the situation  
13 was.

14 Q. Did you actually know these two individuals?

15 A. I knew the one recently. The other young man,  
16 I didn't really know him. I knew his father. I knew  
17 his cousins. So I didn't know what he was into. I  
18 mean, he went to military school and just happened to be  
19 on one of those evenings they're hanging out on the  
20 corner.

21 Q. Is that the individual who was involved with  
22 gambling, I think?

23 A. They were shooting dice, from what I  
24 understand, on the corner; and one young man lost a  
25 dollar, and he just shot him because he wanted his

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1 dollar back.

2 Q. And the other one, the one involved in a  
3 burglary of the person's home or a robbery?

4 A. Possibly a burglary of the home for money that  
5 they said he had from gambling.

6 Q. I thought you had said something about drugs  
7 being involved?

8 A. Well, they mentioned that the person was a drug  
9 dealer that did the shooting.

10 Q. How does that make you feel? Here is somebody  
11 doing something wrong, and obviously you're living  
12 this --

13 A. It surprised me, knowing their upbringing;  
14 because everybody is their own individual pretty much to  
15 me. At that point both these young men were at least  
16 eighteen, and they had made their own decisions of which  
17 way to go.

18 Q. I'm going to talk to you a little bit more  
19 about the situation where you were kind enough to talk  
20 on this very last question, 76, about, I don't know the  
21 victims; but because of the location, I could possibly  
22 know the relatives and friends of the victims. And I  
23 think you've indicated that one of your two daughters  
24 went to a birthday party?

25 A. Actually, it was at a hotel. I want to say it

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1 was a slumber party.

2 Q. When was that?

3 A. When my daughter was in middle school. And so,  
4 she's in the 10th grade now. So possibly two or three  
5 years ago.

6 Q. That was slumber parties. I'm going to assume  
7 there was some adults there?

8 A. I wasn't there, no. I just dropped her off  
9 with some other friends that were going. I was like the  
10 drop off mom.

11 Q. When you wrote that in Number 76, how did you  
12 feel when suddenly you're at the point where you  
13 realize, hum, I may know these people; I may know  
14 relatives?

15 A. I didn't feel concerned about myself and how I  
16 would deal with the situation. I felt concerned about  
17 how he would feel about somebody that possibly knew  
18 somebody that he was accused of doing something to, and  
19 the thought of, how would she react? I mean, how is she  
20 actually going to deal with me? And that's why I was  
21 like, I need to put this in here; because more so for  
22 them than myself. I think I'm a fair person; but that  
23 doesn't mean he thinks I'm a fair person, or would think  
24 I'm a fair person later on.

25 Q. And you mentioned how she, I think would -- you

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1 said she would think of you, if I'm not mistaken?

2 A. I meant he. I'm meaning the defendant.

3 Q. Okay, fine. A lot of types of evidence that  
4 you can hear. Judge Burdette has already told you about  
5 direct evidence, circumstantial evidence. It is quite  
6 possible at the punishment phase of the trial you might  
7 hear victim impact type of evidence; and you know,  
8 you're hearing evidence about a family or somebody that  
9 you may have had some contact with. How would you feel  
10 about that type of evidence, being so personal in  
11 nature, and you knowing these individuals on some  
12 personal basis?

13 Because let me back up. I know that we  
14 all put labels on everyone, but we're all people. And I  
15 think these type of situations do touch us, as people;  
16 and that's the kind of thing that I'm trying to talk  
17 with you about here.

18 A. I don't know. I don't know how I'll react to a  
19 personal comment.

20 Q. Do you think you may empathize more with the  
21 victims in the case -- in that particular circumstance,  
22 given your familiarity with the family?

23 A. No, I don't think I'll be more familiar -- I  
24 mean, I don't think I would sympathize with them any  
25 more than I would another parent that lost a child.



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1 Q. Tell me why you say that.

2 A. Well, because we weren't that close; so it's  
3 not like my cousin's daughter that I have, you know, all  
4 the time and I'm with all the time. This is more of a  
5 person who was an acquaintance that we may have seen  
6 each other at P.T.A. meetings or something like that, or  
7 they were at the Y kind of situation. Like I said, I  
8 don't think it was the victim at all. I think it was a  
9 relative, but it's not someone that I socialize with on  
10 a regular basis or that's really close to me.

11 Q. Have you heard or read anything about this  
12 case?

13 A. When it happened, yes.

14 Q. Could you tell me what you remember hearing or  
15 reading?

16 A. I remember hearing that when the people in the  
17 car had stopped to help someone on the side of the road  
18 that something happened, and the two guys were shot and  
19 the girl was taken off. And then they found her body,  
20 like, two or three days later.

21 Q. Okay. How did you feel when you heard that?

22 A. Upset and said, That can't be all to it. I  
23 mean, that sounds really strange or bizarre.

24 Q. What made you sort of come to that conclusion?

25 A. Working in the neighborhood that I work in,

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1 everything happens. I hear about it all the time. I'm  
2 just kind of used to there being more to a situation  
3 than what it was.

4 Q. Do you believe what you heard?

5 A. I don't know what to believe, to tell you the  
6 truth.

7 Q. Have you ever found or heard something in the  
8 news or read in the news that really wasn't true?

9 A. Yes.

10 Q. Question I'm going to ask you is pretty  
11 obvious. You can possibly anticipate what it is. And  
12 basically, it's having received the information that you  
13 have, thinking about it, whatever you think about it,  
14 could you be a fair juror in this case?

15 A. Yes.

16 Q. You understand why?

17 A. Uh-huh, I understand.

18 Q. You anticipated the question, too?

19 A. Uh-huh.

20 Q. Let me talk to you a little bit about your  
21 questionnaire. Specifically, your father is your  
22 minister?

23 A. Yes.

24 Q. You're not sure about the position of your  
25 church on the death penalty?

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1 A. I'm not a regular churchgoer.

2 Q. He wants to know, would you like to call your  
3 father and find out?

4 A. No.

5 Q. Any particular reason?

6 A. No. I really don't know what his position is,  
7 to tell you the truth. I don't.

8 Q. Could we have the benefit of your position,  
9 though? If you became a juror in this case, would we  
10 have the benefit of your position, your thoughts on  
11 this?

12 A. Yes.

13 Q. And not your father's?

14 A. And nobody else's, yes.

15 Q. You're asked all these questions; and one of  
16 them was, What are your feelings about the death  
17 penalty? And you say, I personally do not believe I  
18 could take a life -- which you told us again this  
19 morning -- but I believe the punishment should fit the  
20 crime. Can you tell us what that means? Because  
21 obviously, we're dealing with a death here. And if the  
22 punishment should fit the crime, then you automatically  
23 think that the death penalty should be the punishment  
24 for somebody who took another person's life? What do  
25 you -- what did you mean when you were writing that?

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1 A. That I, personally, could not kill someone, you  
2 know, with my hands, by a gun, by an injection or  
3 anything like that. I don't think I could do that. But  
4 if someone killed someone intentionally, with no  
5 thoughts, I mean, just total disregard for human life,  
6 then I think they need to have the death penalty. I  
7 could say yes to that.

8 Q. Okay. You understand that in determining  
9 whether or not somebody is guilty of capital murder, you  
10 know that that's an intentional death; they intended  
11 that result to be the product of their unlawful act. In  
12 other words, they didn't shoot the person in the foot  
13 when they died. They shot them with the intention they  
14 die. So you always have that intentional taking of a  
15 person's life.

16 Are you telling me that having found  
17 somebody guilty of that type of an intentional act in  
18 the capital murder scenario, so to speak, you feel that  
19 that person is the one who deserves the death penalty.

20 A. If I really felt that that person intentionally  
21 took that person's life, I possibly would vote for the  
22 death penalty.

23 Q. Are you saying, then, that you would look at  
24 the Special Issue, knowing that they had done that act,  
25 because you're always going to have that evidence with

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1 you to answer these Special Issues and having come to  
2 that conclusion answer Special Issue Number One yes?

3 A. Yes.

4 Q. Can you do that in every case?

5 A. Right.

6 Q. And you'd do that?

7 A. If I believe that they did that, yep.

8 Q. And basically, that would be your personal  
9 answer to that question?

10 A. Yes.

11 Q. No matter what anyone else says?

12 A. No matter what anybody else said. If you talk  
13 to anybody, everybody would tell you I'm fair with  
14 everybody and I'm not influenced by other people.

15 THE COURT: Miss Landry, I have a couple  
16 of questions for you. I want to be sure I understand  
17 your answer that you've just given Mr. Wentz. Are you  
18 saying that if you found somebody guilty of capital  
19 murder that you would always answer that first question  
20 yes?

21 VENIREPERSON: I believe so.

22 THE COURT: You're excused. Thank you,  
23 ma'am.

24 Mr. Wentz, for purposes of the record, do  
25 you have a motion?

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1 MR. WENTZ: Yes, Your Honor.

2 THE COURT: Defense's challenge is  
3 granted.

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1 KATHERINE MARIE WALLER,

2 having been first duly sworn, testified as follows:

3 VOIR DIRE EXAMINATION

4 BY THE COURT:

5 Q. How are you this morning? First off, Miss  
6 Waller, I'd ask you to remember about yesterday, about  
7 the things we talked about, this morning and the things  
8 we talked about. Out of everything we have talked  
9 about, do you have any questions at all for me?

10 A. No, sir.

11 Q. Is there anything, to this point, we haven't  
12 talked about that you would like for us to put on the  
13 table because it might have some bearing on your service  
14 as a juror in this case?

15 A. Not that I can think of.

16 Q. Anything about your personal life, anything  
17 about your professional life, anything about your  
18 health, or any other thing that you can think of, that  
19 might interfere with your ability to be a juror in this  
20 case during the time frame?

21 A. No.

22 Q. I believe that all this process is about now is  
23 to visit with you about the rules that can come into  
24 play during the course of a trial like this to see if  
25 you have any disagreement with them to the extent that

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1 would cause you to not be able to follow them. And from  
2 what you've heard up to this point, any disagreement  
3 about any of the stuff we talked about?

4 A. Huh-uh.

5 Q. You said if you were a juror, you could call it  
6 down the middle; whatever the evidence is, wherever the  
7 evidence takes you, that would be the verdict you would  
8 return?

9 A. Uh-huh.

10 Q. Now, Miss Waller, I want to invite your  
11 attention to the concept for just a second. Because if  
12 I had never been to the courthouse before and if  
13 somebody told me that if you're a juror in capital  
14 murder case and if your jury finds a defendant guilty of  
15 capital murder, and then we know we get to these  
16 questions; and if the jury answers based upon the  
17 evidence in a given case yes to Question Number One, in  
18 that you found that the person not only committed the  
19 capital murder, but that they are also a continuing  
20 threat to society, in that event I'd always answer  
21 Question Number One in such way that the death penalty  
22 would be imposed. You could see how somebody would  
23 think that?

24 A. Uh-huh.

25 Q. But can you see that if that were the way it

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1 was supposed to be, we would never ask the second  
2 question?

3 A. Right.

4 Q. So the second question is looking for some  
5 independent feature, or asking the jury to look for some  
6 independent feature contained within the testimony. And  
7 it may be there, and it may not be there, case to case  
8 to case. But it is the jury's obligation to search the  
9 evidence to see if there is something in the case that,  
10 in jury's mind, is sufficient to reduce the death  
11 sentence to a life sentence. Do you find that's  
12 something that makes sense?

13 A. Yes.

14 Q. And again, whatever that feature is there in a  
15 given case for you, that's your call; but the only  
16 obligation is that you research the case to see. If  
17 it's no, answer the question no. The death penalty is  
18 imposed. If the answer is yes, you answer that question  
19 yes. And then a life sentence is imposed. Any  
20 questions about that at all?

21 A. No.

22 Q. Any questions before we start?

23 A. No.

24 Q. Okay.

25 THE COURT: Mr. McClellan.

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1 death penalty. I think it's a proper-type punishment  
2 for certain types of crimes, but I don't think I could  
3 ever make that type of decision or decisions knowing  
4 that it would result in this Judge ordering the  
5 execution of the defendant sitting over here on trial.  
6 Do you have any doubts about your ability to participate  
7 in this type process and make that type of decision if  
8 that's what the law and evidence called for?

9 A. No.

10 Q. So, you could participate in the process and  
11 make a decision that's required by whatever the law and  
12 the evidence showed?

13 A. Correct.

14 Q. Was there ever a period of time in your life  
15 where you opposed the death penalty?

16 A. No.

17 Q. All right. There is also -- in the  
18 questionnaire there is also some agree/disagree areas.  
19 Everybody rolls their eyes about those, but one in  
20 particular says that -- you checked that you agreed on  
21 life imprisonment is more effective than the death  
22 penalty. Can you tell me what your thoughts were about  
23 that?

24 A. Initially, my first thought, I didn't agree or  
25 disagree with that statement; and we didn't have another

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# VOIR DIRE EXAMINATION

2 BY MR. MCCLELLAN:

3 Q. Miss Waller, my name is Lyn McClellan. And  
4 along with Claire Connors, we're representing the State  
5 of Texas in this case. Ask you to sit back and tell  
6 us -- we're going to ask your opinion about certain  
7 aspects. We're going to go over your answers in the  
8 questionnaire and try get a better feel for what your  
9 thoughts are about the issues that might affect a case  
10 like this.

11 First of all, there is a question in here  
12 that says, What are your feelings about the death  
13 penalty? And you said, I believe sometimes it is  
14 necessary. Then in quotation marks you put "mixed  
15 feelings." Can you tell me what your thoughts are?

16 A. Well, basically, I just think that it's from  
17 case to case. I don't feel like I could make a blanket  
18 statement that I'm for the death penalty or I'm against  
19 the death penalty. So, I determine that to be mixed  
20 because --

21 Q. Sometimes when people say mixed feelings, I  
22 think they're trying to tell me that they have doubts  
23 about their ability to make that type of decision,  
24 regardless of what the evidence is. In other words,  
25 some people come in and say, yeah, I believe in the

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1 choice. And I must -- in my professional career, I  
2 write questionnaires. And, so --

3 Q. Oh, you do?

4 A. I had a little difficulty going from critiquing  
5 the questionnaire to answering truthfully; and I know  
6 y'all run into that, too.

7 Q. We'll consult with you later on that.

8 A. So, but I have -- I don't have a call to that;  
9 but I didn't have a choice, so I didn't necessarily  
10 disagree with it. But, so, I agreed more than I  
11 disagreed. Does that make sense? There wasn't a good  
12 choice.

13 Q. Yeah. Some people come up and say -- or have  
14 told us, I think a life sentence is worse than the death  
15 penalty; because you have to live with your consequences  
16 all your life, everyday and all that. Of course,  
17 somebody doesn't care --

18 A. I think that's an individual call on the person  
19 who has the sentence.

20 Q. I want to make sure you're not saying you would  
21 favor life every time; and only in the very, very rare  
22 circumstances would death ever be an option?

23 A. No.

24 Q. Another question. And, of course, again, may  
25 go back to the /TKPWHEFRIDZ /RAOEUG above it. Says, It

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1 doesn't make any difference to me whether or not we have  
2 the death penalty, and you checked you agree with that.  
3 Tell me what your thoughts were there.

4 A. Well, again, you had to be black or white. And  
5 it's not a passion of the law for me, and that's what I  
6 was just trying to say there, if there is a law. And I  
7 have lived in the State of Texas, and so I respect that  
8 law. And if the evidence says, then I will respect the  
9 Texas law. But --

10 Q. Do you think -- let's put it a different way.  
11 Let's say you're queen for a day, and you got to choose  
12 what laws were going to be or not be?

13 A. Uh-huh.

14 Q. Would you keep the death penalty in the State  
15 of Texas, or would you do away with it?

16 A. Again, back to my profession, we don't ever do  
17 anything without tons and tons of research. So I would  
18 personally, if I was queen for a day, I guess be a quick  
19 study and do research before I would answer that  
20 question. I hate to say that, but I wouldn't -- I don't  
21 have an opinion. I would definitely base that on  
22 research.

23 Q. Okay. Tell me about your job and what you do  
24 there.

25 A. I'm an instructional technologist. And we do

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1 the instructional systematic design process where we  
2 develop training for corporations. I'm a former  
3 schoolteacher, so we develop questionnaires to identify  
4 needs and assessments for performance gaps and  
5 corporations and develop and come up with solutions to  
6 fix their problems. And it can be anywhere from  
7 performance appraisal to an end user's job performance.  
8 They need to learn how to put a roll on a roll tender  
9 for a printing press. So I develop training like that,  
10 so it's very research-based.

11 Q. How did you go from being involved like in Deer  
12 Park I.S.D., where you taught, to doing this?

13 A. I have a master's in instructional technology,  
14 so it kind of led me from the classroom to the business.  
15 You can do either way. You can stay within the  
16 education system and move throughout.

17 Q. What did you teach when you taught education?

18 A. I thought fifth grades and eighth grade, and my  
19 emphasis was mathematics; but I also taught science,  
20 social studies, writing, spelling, and arts.

21 Q. You say you read true crime, and you say you  
22 forgot the author. Are you talking about true crime  
23 meaning that type of topic or a book?

24 A. This was a book.

25 Q. Called True Crime?

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1 A. Uh-huh, it was just kind of bizarre, the  
2 question. I read it like three months ago, because it  
3 had Clint Eastwood on the cover. So --

4 Q. Was it about trials?

5 A. Death penalty.

6 Q. What did it say about the death penalty?

7 A. It was actually the Beecham case in St. Louis  
8 or something; and he was sentenced to the death penalty  
9 and he apparently was innocent, so --

10 Q. Okay. Did you determine that that was the  
11 case, that he was innocent?

12 A. Well, that was -- I guess the governor -- I  
13 think it's a pretty -- I don't know how fictional the  
14 book became between the facts -- I found it interesting.  
15 I, again, didn't -- it didn't sway my opinion on the  
16 death penalty or anything.

17 Q. The fact that you may have heard of cases where  
18 people have gotten the death penalty and have been  
19 determined, from whatever evidence, later to be innocent  
20 or their sentence was commuted, you think that would  
21 cause you to be reluctant to give the death penalty if  
22 you thought the law and evidence called for it in the  
23 case you heard?

24 A. No, because I think the process of appeals  
25 works, obviously, if that's the case; and that's why

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1 it's there, so --

2 Q. Okay. All right. You say you have a friend of  
3 the family that's a D.P.S. Officer. Do you ever talk  
4 with --

5 A. He's retired, actually.

6 Q. Okay. And your sister-in-law was a Dallas D.A.  
7 several years ago?

8 A. I want to say it was like five years ago.

9 Q. Do you ever talk with her about her cases or  
10 anything?

11 A. No.

12 Q. You have to pardon me if I ask a question I've  
13 already asked. We've been doing this for quite awhile.  
14 What kind of cases come to your mind when you think of  
15 cases where you think the death penalty ought to be  
16 available?

17 A. No, you haven't asked that question.

18 Q. Good.

19 A. You know, that's a real hard call. I mean, I  
20 don't have, like, an immediate response. It depends. I  
21 mean, I guess if it was something I would consider  
22 heinous, murder, you know. I don't know.

23 Q. Do you think whether it's --

24 A. I'm sorry.

25 Q. In making that type decision, do you think it's



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1 important to know whether the crime was committed --  
2 let's say you've had a spur-of-the-moment decision  
3 versus a plan.

4 A. Yes.

5 Q. Okay. Do you think it's a factor as to whether  
6 or not a person may have had some disagreement with the  
7 person as opposed to being someone they didn't know?

8 A. That would depend on the disagreement. And,  
9 yeah, probably if they didn't know them and they just,  
10 in cold blood, you know, it would probably affect me  
11 more than if there was some history.

12 Q. A lot of people have come in and said, if  
13 someone intentionally -- you know, intentionally takes  
14 someone's life of an innocent person for no particular  
15 reason or no justified reason -- of course, murder is --  
16 by definition, murder is the intentional taking of  
17 another person's life.

18 A. Uh-huh.

19 Q. And we're not talking in self-defense, and  
20 we're not talking accident. We're talking when you  
21 intend to kill someone, and then it becomes capital  
22 murder if that murder is committed while committing  
23 another crime. Like, what we have alleged in this  
24 indictment is murder during a kidnapping, and also  
25 killing two or more people during the one criminal

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1 evidence, evidence about the individual, evidence about  
2 the crime. And the first question you get is: Do you  
3 find from the evidence beyond a reasonable doubt that  
4 there is a probability -- I'd suggest to you more likely  
5 than not -- that the defendant would commit criminal  
6 acts of violence -- doesn't have to be another murder or  
7 capital murder. Could be any criminal act that is  
8 violent in nature; burglary, robbery, hitting someone  
9 and knocking them out, causing injury, shooting someone  
10 and not killing them, anything that's criminal violence.

11 So, you're asked to determine after you've  
12 heard all the evidence, as the defendant sits before you  
13 that day, Do you find from the evidence beyond a  
14 reasonable doubt there is a probability that it's more  
15 likely than not that that person would be a continuing  
16 threat to commit criminal acts of violence that would be  
17 a continuing threat to society? Do you think you would  
18 be able to make that type of decision, depending upon  
19 what the evidence was?

20 A. Yes.

21 Q. All right. What kind of evidence do you think  
22 is helpful in making a determination about whether or  
23 not a person you had already found guilty of capital  
24 murder would be, within a probability, a continuing  
25 threat to commit criminal acts of violence?

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1 episode.

2 We have alleged two different ways of  
3 committing capital murder within the same indictment.  
4 That would allow a jury then to either find one or the  
5 other beyond a reasonable doubt and find guilty as  
6 charged in the indictment. All twelve of them don't  
7 have to agree whether it was kidnapping, or murder, or  
8 whether it was a multiple murder, just as long as they  
9 agree with one or the other. If they don't believe it,  
10 it's not guilty. If they believe it's one or the other  
11 or both, then it's guilty.

12 Once you determine, if you do, that  
13 someone is guilty of capital murder, you go to the  
14 second stage of the trial. And the Judge talked to you  
15 in the beginning about in order to get there, you would  
16 have had to have already found someone guilty of capital  
17 murder. If you find someone guilty of capital murder,  
18 that means they intentionally took the life of another  
19 person without any legal justification during the course  
20 of a kidnapping or while killing another person.

21 At the punishment stage of a trial you may  
22 hear additional evidence about the defendant's  
23 character, background, criminal history, or lack  
24 thereof, other than abilities and disabilities. Then  
25 you're asked to answer these questions based on all that

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1 A. One, that they somehow could prove they were  
2 even there.

3 Q. Okay. Now you would have to do that before you  
4 found the person guilty.

5 A. Repeat the question.

6 Q. Okay. If you find someone guilty and you go to  
7 Issue Number One -- and it says, Do you find from the  
8 evidence beyond a reasonable doubt there is a  
9 probability or more likely than not that this person we  
10 have found guilty would be a continuing threat to commit  
11 future acts of violence? What kind of information would  
12 you need to make that decision?

13 A. Right. Well, we would get their history and  
14 their past? We will get to know their past?

15 Q. If there were any, right, you would see that  
16 kind of information is the kind of information you would  
17 be looking for about the history of the individual, his  
18 past criminal record, or that kind of stuff?

19 A. Uh-huh.

20 Q. Now, do you understand if you found someone  
21 guilty of capital murder -- well, let me ask you this:  
22 Let's say you found someone guilty of capital murder.

23 A. Okay.

24 Q. What's the punishment going to be?

25 A. Immediately?



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1 Q. Yeah. Do you know what the punishment is going  
2 to be? I mean, we know we have two parts to the trial.  
3 But do you know what the punishment is going to be after  
4 you found him guilty of capital murder, or are you going  
5 to wait till you hear the other evidence and go through  
6 that?

7 A. So, personally, because I was going to say life  
8 or death, no, I would wait and listen before I decided.

9 Q. Let's say, even if I ask you that question,  
10 find someone guilty of capital murder, you tell me life  
11 or death, can you tell me without knowing what the facts  
12 were?

13 A. My understanding was that if they were  
14 convicted of a capital murder, that those were the only  
15 two options. So, I thought I was giving you a multiple  
16 choice answer. I don't know the law; so, no, I wouldn't  
17 know until -- I mean, is there another choice?

18 Q. Well, no. The choice is made by answering  
19 these questions.

20 A. Okay.

21 Q. Some people, though, may come in and say, hey,  
22 if I found them guilty of capital murder, there is only  
23 one choice in my mind and that's death. Forget about  
24 it.

25 A. No, I don't think I'm that way.

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1 Q. So, on Issue Number One, if you answer that no,  
2 that he's not a continuing threat, then he's going to  
3 get a life sentence and the process is over.

4 A. Okay.

5 Q. If you answered yes, there is a probability he  
6 is a continuing threat to commit criminal acts of  
7 violence that would be a continuing threat to society,  
8 then you go to the second issue. By the time you get  
9 there to the second issue, you would have already found  
10 a person guilty of capital murder and you would have  
11 found they're a continuing threat to commit future acts  
12 of violence, at least to a probability. At that point  
13 the defendant's going to receive death. And unless you  
14 decide on Issue Number Two, that he's not -- because it  
15 asks you to go back and look at the evidence to the  
16 crime. That's what you heard at guilt or innocence.  
17 The defendant's character and background, that's what  
18 you heard in punishment. His personal moral  
19 culpability. I'd like to refer to it as his personal  
20 responsibility. Is he the shooter, or the stabber, or  
21 the getaway driver? And do you find there is sufficient  
22 mitigating circumstance or circumstances -- I'd like to  
23 refer to it as sufficient reasons -- why this person  
24 should receive life as opposed to death? It gives you  
25 the opportunity to change the vote from death to life if

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1 you find there is sufficient reasons that merit it.

2 A. Uh-huh.

3 Q. Okay. That doesn't mean you always would.  
4 Just means you have the opportunity. Kind of a  
5 fail-safe question. You've made decisions already based  
6 on the evidence. Are you absolutely sure you want to  
7 stick with the decision you made of death, or do you  
8 find there are reasons -- there is circumstances about  
9 the crime, circumstances about the individual,  
10 circumstances that we've heard about what had happened  
11 and how it happened; and we believe life is more  
12 appropriate than death. It gives the option of doing  
13 that so that you're not stuck with this black or white  
14 deal. You get to make that choice. Okay. Any problem  
15 with that aspect?

16 A. No.

17 Q. Now you may go through and look through the  
18 evidence and find nothing mitigating; or you may find  
19 things that are mitigating, but they're not sufficiently  
20 mitigating to change your answer, you know. But you're  
21 committed to the search, to looking for that type of  
22 information. People have asked me before, well, once  
23 you found them guilty of capital murder, or once you  
24 found they're a continuing threat to commit future acts  
25 of violence, isn't that pretty much what we're all

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1 about? It does mean they get death unless you decide on  
2 Issue Number Two that -- or there is a reason or reasons  
3 why they should not. If you do make that decision, I  
4 give you every opportunity to make that choice. You  
5 don't have to stay with the decision already made. Any  
6 problem with that?

7 A. No.

8 Q. Is there any reason you can think of why you  
9 could not serve as a juror in case like this?

10 A. No, and I'll be honest. I wish I could.

11 Q. Looks like you were saying, well, what can I  
12 think of now?

13 A. No.

14 Q. Well, are you saying you don't want to be a  
15 juror in this case?

16 A. I can honestly say I'm torn. I feel like I'm a  
17 good citizen, and I feel like that I need to be making  
18 myself available for this and that I shouldn't -- it  
19 kind of made me uncomfortable when people or talking  
20 about how they were going to try and get out of it.

21 On the other aspect, I just started a job  
22 in July; but we looked in the calendar, and it shouldn't  
23 be too taxing, barring our big proposal doesn't come  
24 through. But we've managed to work it out. That's my  
25 only fear, is if we come through and we've won this

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1 quarter of a million dollar account and I'm going to be  
2 working. But I talked it over with my coworker and  
3 bosses, and we just have to do some evenings.

4 Q. You think you would be able to handle that  
5 aspect if you're chosen?

6 A. Yeah. I handled full-time school and full-time  
7 work. I think I can.

8 Q. Okay. Appreciate it. Well, thank you very  
9 much, and I appreciate your time. I'll pass you.

10 THE COURT: Thank you, Mr. Wentz.

11 VOIR DIRE EXAMINATION

12 BY MR. WENTZ:

13 Q. Good morning.

14 A. Morning -- afternoon almost.

15 Q. My name is Kurt Wentz. This is Wayne Hill, and  
16 this is Charles Monroe (sic). And for about the next  
17 fifteen or twenty minutes, I'd like to talk to you about  
18 a whole lot of things. As we visit, please don't  
19 hesitate -- in fact, I encourage you to tell me the  
20 reasons that you're answering my questions the way in  
21 which you are, okay?

22 A. Okay.

23 Q. You do questionnaires?

24 A. For a different purpose, obviously, but yes.

25 Q. On 18 you're asked about what clubs you belong

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1 things you've heard this morning. I don't mean to take  
2 up your time. I know it's valuable, but I just think we  
3 need to go over this a little bit. And the Judge  
4 visited with you and you've already been spoken to about  
5 this thing called capital murder and lesser offenses,  
6 and you know that capital murder involves the  
7 intentional taking of somebody else's life. In other  
8 words, you intend to kill them. No doubt about it. And  
9 to have a capital murder, you have that intentional  
10 taking of the life.

11 It's been alleged in this case in the  
12 course of a kidnapping, or you may have the taking --  
13 intentional taking of two people's lives in the course  
14 of the same transaction. And if you believe that, then  
15 you could find the person guilty of capital murder if  
16 you believe it beyond a reasonable doubt. But it's  
17 possible for people who listen to the evidence to maybe  
18 say, well, gosh, I see the case. I see there is a  
19 killing, but I didn't see a kidnapping. Or you may say,  
20 I see a kidnapping, but I don't see how that person may  
21 have been responsible for that death.

22 So, you might say there is a finding of a  
23 lesser offense of kidnapping. By the same token, you  
24 may look at the two deaths in the course of the same  
25 transaction and you say, well, that's not the same

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1 to, and there is this International Society for  
2 Performance Improvement. What is that?

3 A. Have you ever heard of A.S.T.D.? It's just a  
4 training -- national organization for trainers, but the  
5 new buzz word is performance improvement instead of  
6 training.

7 Q. It asked a question, Do you know people in law  
8 enforcement? And you talked about your sister-in-law is  
9 an Assistant District Attorney. It also asked whether  
10 or not you knew any attorneys and Judges and that sort  
11 of thing, and you mentioned a Lisa Andrews?

12 A. That's correct.

13 Q. Is she the Lisa Andrews who is a District  
14 Attorney here in Harris County?

15 A. I believe she is. Lisa and I went to high  
16 school together, and I know she went to law school. And  
17 through the small town that I live in, I heard she was  
18 working there. So as of a year ago when I saw her at  
19 the last wedding shower, she was still working here; but  
20 we don't speak on a regular basis.

21 Q. You say the small town that you live in. What  
22 did you mean by that?

23 A. Deer Park. I actually live in Pasadena, but I  
24 went to Deer Park school; so --

25 Q. To some extent, I'm going to repeat some of the

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1 transaction. There are two different types of death --  
2 two different deaths. There is no connection. And you  
3 find the person guilty of murder, still a very serious  
4 crime. That's what the Judge told you by the punishment  
5 it carries with it.

6 One of the things that we talk about with  
7 people and we ask them, you know, what types of crimes  
8 do you think deserve the death penalty? And people will  
9 say, serial murder. And I think we all have images of  
10 that person in your mind. We think about those kind of  
11 things, impulse or whatever. And it may be somebody  
12 who, at the first of the year, kills somebody in  
13 Florida, and in June they kill somebody in Montana, and  
14 maybe October they kill somebody in Florida again.

15 So, we have that multiple killing, but  
16 that's not necessarily in the course of the same  
17 transaction. I believe the same transaction  
18 contemplates, basically, in a short period of time, to a  
19 continuous matter of conduct over the short period of  
20 time. So, you can see how there is two different  
21 things?

22 A. Yes.

23 Q. Am I making myself clear?

24 A. Yes, you are.

25 Q. When you were doing your teaching, did your

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1 teaching job lead you to where you are in terms of your  
2 employment? I think you said you were teaching fifth  
3 grade, if I'm not mistaken?

4 A. Uh-huh.

5 Q. Was this sort of a natural progression, or did  
6 you see this field out there and you went from teaching  
7 into it? How did that work out?

8 A. Actually, you can either stay in education --  
9 and in that case, you would do somewhat of a different  
10 role. But it's an education degree. My master's degree  
11 is teaching adults and teaching children. While there's  
12 different theories, there isn't much difference; but I  
13 enjoy the development side of getting the course ready  
14 and the execution of it without the parent phone calls  
15 and disciplining aspect of it.

16 Q. Do you think young adults can change over time?

17 A. I can just speak for myself, and I can say I'm  
18 quite a different person from the day I graduated high  
19 school till the present. So --

20 Q. If somebody comes to believe beyond a  
21 reasonable doubt that the State has proven somebody  
22 guilty of capital murder, then we get to this second  
23 phase of the trial. And that's where these Special  
24 Issues come into play.

25 And one of the things that I think is a

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1 you when you answer that Special Issue Number One in the  
2 course of a capital murder case. And it asks you to  
3 look at whether or not this person that you found guilty  
4 of capital murder would commit criminal acts of violence  
5 that would constitute a continuing threat to society.  
6 And the Judge was very good this morning in talking to  
7 you about all these words, so we don't have legal  
8 definitions for them. What they mean to you is what  
9 they mean.

10 A. Uh-huh.

11 Q. Have you basically ever thought of what -- put  
12 all those words together, criminal acts of violence that  
13 constitute a continuing threat to society? Did you ever  
14 worry about that term or that phrase before?

15 A. Before yesterday?

16 Q. Before yesterday.

17 A. No, not before yesterday.

18 Q. And I think the point is that it's not any  
19 crime. It's a real -- it's a serious crime, and you  
20 determine the level of seriousness for you. And it's  
21 meant as a safeguard; because it's certainly possible  
22 that any of us could do anything wrong, let alone  
23 somebody who had done a capital murder. There has to be  
24 some elevated level of seriousness before special Issue  
25 Number One could be answered yes. Would you agree or

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1 problem, whenever we come to the courthouse, we're  
2 confronted with labels. People introduce me, and I'm an  
3 attorney. And they immediately make all these  
4 assumptions about me, but they don't know me. I'm  
5 talking to you as a potential juror. You may be  
6 referred to as a juror, and people make assumptions  
7 about jurors. And that's unfair, because it's not about  
8 you. And when it comes to the punishment phase of the  
9 trial, it's supposed to be an individualized process.  
10 If you found Charles guilty of this capital murder, it's  
11 supposed to be individualized for him or any defendant  
12 who is on trial. Do you understand that?

13 A. Yes.

14 Q. Do you think that's important?

15 A. Yes, I do.

16 Q. That first question, it sets out to, I think,  
17 determine whether or not you believed beyond a  
18 reasonable doubt that the person you found guilty of  
19 capital murder would be a future danger. And we know  
20 going into this situation that the answer is no; because  
21 the State has the burden of proof. And again, it's  
22 beyond a reasonable doubt. Judge Burdette read that to  
23 you the other day when he visited with you.

24 And I would submit that if it ever meant  
25 anything to you at any time, it has to mean something to

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1 disagree?

2 A. Could you repeat that?

3 Q. All right. I asked it bad. I guess I was  
4 really asking for your thoughts; because when the Judge  
5 was talking to you, I think he said you have to consider  
6 the words in context. And he talked about criminal acts  
7 of violence.

8 A. Uh-huh.

9 Q. And that anything is possible for any  
10 individual to do a D.W.I.

11 A. Uh-huh.

12 Q. And that's a crime. It's something wrong. Or  
13 you could hit somebody in the nose. That's a crime.  
14 That's wrong. But it doesn't necessarily rise to the  
15 level of a criminal act of violence that would  
16 constitute a continuing threat to society. Would you  
17 answer that Special Issue Number One yes just because  
18 you thought the person might commit a crime, or would it  
19 have to be a more serious type of crime for you to  
20 answer, such as this is contemplated by criminal acts of  
21 violence that would constitute a continuing threat to  
22 society. So, I guess it's hard to say. If you punch  
23 someone in the nose, is it, you know, just -- that was a  
24 bad example.

25 A. Okay. I would look for a violent act, and I

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1 would consider that with intent to do harm of some  
2 nature towards property or person.

3 Q. The second Special Issue comes into play only  
4 after you've made two pretty overwhelming decisions.  
5 One, somebody's guilty of an egregious case, capital  
6 murder. And you've also rendered this decision that you  
7 thought they were going to be a future danger to  
8 society. That's a shorthand version of it.

9 When you were given the questionnaire, you  
10 were given a Question 68. It's about, do you believe  
11 mitigating evidence concerning a capital murder --  
12 capital murder, defendant's background, should be  
13 considered in deciding whether or not he or she should  
14 receive the death penalty, and you said yes. Do you  
15 remember that question.

16 A. Uh-huh.

17 Q. Can you tell me why you answered that question  
18 in that manner?

19 A. Can I give you an example?

20 Q. Sure.

21 A. It's like when I taught school. It's like it  
22 was real hard to be -- you know the students. You know  
23 their background. You know everything they've done.  
24 They spent a large majority of their life at the --  
25 sometimes they do things. And even perfect children

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1 that have never gotten in trouble before, have perfect  
2 conduct, do wrong things. And I think that when you're  
3 looking at what happened and you get both sides of the  
4 story. And you're thinking of what you have to do with  
5 children. You don't get to only hear one side. You  
6 have to look at the circumstances, and who the person  
7 is, and what the true intent was of -- you know, was it  
8 truly an accident, or was it a crime? And all that  
9 comes into play, I think. And so that's why I suggest  
10 just because of past experience, even if he's been a  
11 rotten person the whole year, but then in this instance  
12 that was not their intent, it was, you know, whatever  
13 the case may be then that needs to be taken into account  
14 with the punishment. So, that's why.

15 Q. That question is good, because it looks to the  
16 person's background. But Special Issue Number Two also  
17 contemplates you looking at a couple of other things.  
18 One, the circumstances of the offense, as well as the  
19 defendant's character, background, and his moral  
20 culpability. And it's quite possible sometimes for you  
21 to look at the crime itself and say, well, gosh, yes,  
22 that's a capital murder; but there is some circumstance  
23 of that crime that caused me to have a problem, that  
24 caused me to think, well, maybe this person does warrant  
25 a life sentence. You can look at the crime itself and

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1 come to some sort of conclusion and find if there is  
2 mitigating evidence there so that the person may receive  
3 a life sentence.

4 You mentioned reading this book, True  
5 Crimes. Did you see the movie?

6 A. Yes.

7 Q. Was the movie like the book?

8 A. No. It was close. They had different -- a few  
9 different scenes.

10 Q. I didn't read the book, but whatever. The way  
11 I saw that, it had to do with basically somebody who got  
12 the death penalty. And there was some evidence  
13 discovered that maybe they didn't do the crime, and the  
14 whole case got reversed. That's my shorthand rendition.

15 A. Right.

16 Q. Okay. Basically, Special Issue Number Two is a  
17 little bit like that, except it has allowed you to look  
18 at this person again and decide whether or not you feel  
19 that the death penalty is warranted and to make your own  
20 decision that, no, it shouldn't. And I think that's an  
21 awfully important and grave responsibility for any  
22 citizen to have. Do you feel comfortable making that  
23 decision?

24 A. I do.

25 Q. One of the -- did you follow the Carla Faye

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1 Tucker case?

2 A. No.

3 Q. When we've talked to other people about cases  
4 and what they thought was proper for a capital murder  
5 case, somebody would say, like the taking of an innocent  
6 person's life and they're just a bystander. Somebody  
7 intends to kill somebody. They had some history between  
8 them. And somehow he took the life of a bystander; and  
9 they refer to the bystander as the innocent person,  
10 which they truly are. Do you hear what I'm saying in  
11 terms of that being an innocent person, and that would  
12 be intentional death?

13 A. Uh-huh.

14 Q. Could you consider maybe the situation where  
15 there is somebody who is the unfortunate victim of a  
16 crime of violence, and then there may be some history  
17 between the person who was killed and the person who  
18 actually does the shooting. And that might be a  
19 circumstance of the case.

20 A. Uh-huh.

21 Q. Let me ask you, is there anything you'd like to  
22 tell me about yourself that you think I should know?

23 A. Not that I can think of, no. Sorry.

24 Q. Let me consult one second.

25 Thank you very, very much.



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1 THE COURT: Thank you.

2 Miss Waller, in just a second I'm going to  
3 excuse you. Before I do, I will tell you we want you  
4 back two weeks from tomorrow, Wednesday, September 29th.  
5 What we're doing is talking to folks individually.  
6 We're creating a pool of about forty-eight people to be  
7 back that day, every single one of whom who have been  
8 through exactly what you've been through. If we can  
9 start at 9:30 that day, we'll be through with you  
10 finally. When we leave here the 29th, everybody will  
11 leave here knowing definitely whether they are or are  
12 not a juror in the case.

13 Between now and when we see you next,  
14 don't you alter your lifestyle one bit for us. You do  
15 your professional things just like you would ordinarily.  
16 Do your personal things the same. If you have a chance  
17 to leave town, take the chance and go. All that we ask  
18 of you between now and when we see you next is this:  
19 Please don't talk about this case with anyone, and don't  
20 let anybody talk about it. If there should be any news  
21 media treatment about the case and the 29th, as to  
22 anything on the television, refuse to watch it;  
23 newspaper, refuse to read it; radio, refuse to listen to  
24 it.

25 Each of those five restrictions is for the

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1 purpose of accomplishing the same objective, and that's  
2 this: If you do become a juror in the case, your  
3 decision, whatever that winds up being, must be based  
4 exclusively upon the information you receive in the  
5 courtroom. You cannot in any way be influenced or  
6 affected by any outside of the courtroom's information.

7 If you need anything for the folks at work  
8 to show where you have been for three days, this will  
9 suffice. This is a reminder note as to the where and  
10 when we want you to be on the 29th, which is right  
11 outside the doors where you were this morning, by 9:30.  
12 Do you have any questions for me?

13 VENIREPERSON: No.

14 THE COURT: Do I understand there is an  
15 agreement by and between the parties that the  
16 Venireperson 40, that being Mr. Ross Menefee Smith, by  
17 agreement of all concerned may be excused.  
18 Mr. McClellan, is that your agreement?

19 MR. MCCLELLAN: Yes, Your Honor.

20 THE COURT: Can you speak for Miss  
21 Connors?

22 MR. MCCLELLAN: Yes, Your Honor.

23 THE COURT: It is hers, also. Mr. Wentz,  
24 your agreement, sir?

25 MR. WENTZ: Yes, it is.

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1 THE COURT: Mr. Wentz, is it also  
2 Mr. Hill's agreement?

3 MR. WENTZ: It is.

4 THE COURT: Mr. Mamou, is it your  
5 agreement?

6 THE DEFENDANT: Yes, sir, Your Honor.

7 THE COURT: Specifically, sir, do you  
8 request Mr. Smith be excused?

9 THE DEFENDANT: Yes, Your Honor.

10 MR. MCCLELLAN: We also have an additional  
11 agreement related to Juror Number 63, and also Juror  
12 Number 70, which I think is for Thursday.

13 THE COURT: And Juror 70, being Lorie  
14 Lowrie McGarity, by agreement of all concerned, also may  
15 be excused. Mr. McClellan?

16 MR. MCCLELLAN: Yes, Your Honor.

17 THE COURT: Is it Miss Connors'?

18 MR. MCCLELLAN: Yes, Your Honor.

19 THE COURT: Mr. Wentz?

20 MR. WENTZ: Yes, sir.

21 THE COURT: And is it Mr. Hill's?

22 MR. WENTZ: Yes, sir.

23 THE COURT: Is it yours, Mr. Mamou?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: Do you request each of those

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1 be excused?

2 THE DEFENDANT: Yes.

3 MICHAEL EVANS,  
4 having been first duly sworn, testified as follows:  
5 VOIR DIRE EXAMINATION

6 BY THE COURT:

7 Q. Mr. Evans, thank you for your patience. It's  
8 been a long day for all of us. First off, I'd like to  
9 ask you to remember back to yesterday the things we  
10 talked about and to this morning when the group was in  
11 the jury box, the things we talked about this morning.  
12 Out of everything that we have talked about, do you have  
13 any questions at all for me?

14 A. No.

15 Q. Is there anything to this point that we haven't  
16 put on the table and talked about that you feel as  
17 though we should, because it might have some bearing on  
18 your ability to be a juror in this case?

19 A. No.

20 Q. It's not necessary that there be; but if there  
21 was, I wanted you to have a chance to bring it up.

22 A. Sure.

23 Q. Is there anything at all you can think of, sir,  
24 whether it might be something about your personal life,  
25 perhaps something about your professional life, or



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1 perhaps something about your health, or something else  
2 that you think in any way would interfere with your  
3 ability to be a juror in this case during the time frame  
4 that we've talked about?

5 A. Nothing I can think of.

6 Q. I believe that this phase of the trial is meant  
7 to accomplish two things. First off, to visit with the  
8 prospective jurors to give you an idea about what some  
9 of the rules are that could possibly come into play  
10 during the course of a trial like this for the purpose  
11 of seeing if you have any dispute or any disagreements.  
12 If you were a juror, you would be obligated to enforce  
13 them.

14 And my question to you is, have you heard  
15 anything that causes you such discomfort that you  
16 couldn't follow those rules if a single one of them, or  
17 any of them, or whatever, if they came into play?

18 A. No.

19 Q. Second part of this process is for you to  
20 satisfy yourself and for the lawyers to be satisfied  
21 that if you were a juror, you would call the case as you  
22 saw it. Let them give you the information. You  
23 evaluate the information that they give to you. And  
24 whatever result occurs, that result would be reached  
25 based upon your evaluation of the evidence presented.

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1 A. Sure.

2 Q. We talked this morning, Mr. Evans, about  
3 capital murder business. We talked about these  
4 questions. And my thought about what might be going  
5 through a juror's mind in this phase of the process is  
6 this: Let's see if I got this right. If I find  
7 somebody guilty of capital murder, I'm saying to myself,  
8 then the next thing that happens is we come back with  
9 additional evidence for the purposes of answering these  
10 two questions.

11 The first question basically asks me to  
12 determine from the evidence whether or not I believe  
13 beyond a reasonable doubt that the defendant on trial is  
14 likely to be a future danger. And let's just say,  
15 hypothetically, I believe the evidence supports a yes  
16 answer. So, what I have done now is I found somebody  
17 guilty of the intentional commission of capital murder.  
18 I've also found beyond a reasonable doubt they're a  
19 future danger.

20 Now I've got this other question I'm  
21 confronted with. And I can see how some people might  
22 say, well, if I have made those two findings to that  
23 point, there's never going to be a time I'm going to  
24 answer that second question in such a way that a life  
25 sentence is going to be imposed. I can see how somebody

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1 might say that to themselves. But can you see that the  
2 second question asks something so remarkably different  
3 from the first two that it is completely independent of  
4 the answers to the other questions?

5 Now, it may very well be that the same  
6 evidence in the case is used to cause you to come up  
7 with an answer. But you're looking at it from a  
8 different perspective. Not, is he guilty? And not, is  
9 he a future danger? Is there something in the case that  
10 makes us think a life sentence is more appropriate than  
11 a death sentence?

12 But can you see how just because a finding  
13 of guilt of capital murder, a yes answer to the Question  
14 Number One is given by a jury, that those events in and  
15 of themselves do not require a no answer to the second  
16 question. There may be evidence. Any questions of me  
17 before we begin?

18 A. No.

19 Q. Thank you, sir.

20 THE COURT: Mr. McClellan.

21 MR. MCCLELLAN: Thank you, Your Honor.

22 VOIR DIRE EXAMINATION

23 BY MR. MCCLELLAN:

24 Q. Mr. Evans, my name is Lyn McClellan. Along  
25 with Claire Conners, we represent the State of Texas in

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1 this case. I want to briefly go over some of the stuff  
2 in your questionnaire and then go over some of the  
3 aspects of the law and make sure we're on the same page.

4 I assume, since we're here today and we've  
5 gotten this far, that you indicated on your  
6 questionnaire there was a hearing problem in one ear,  
7 that that's not a problem for our purposes?

8 A. Not as long as I can watch and see.

9 Q. Okay. And can you assure me that if it is a  
10 problem, if you have to be a juror on the case, that  
11 you'll let somebody know so we can correct that  
12 situation and put you in a position where you can  
13 correct that?

14 A. Right. My right ear is a hundred percent deaf.

15 Q. Now, you also were a major in psychology. Not  
16 using that at this time, what were your plans when you  
17 became a psychology major?

18 A. Sales. In general, sales is what I aspired to  
19 do.

20 Q. As a result of that, there may be psychologists  
21 or psychiatrists that might testify in a case like this  
22 at the punishment stage of a trial. Do you  
23 automatically believe everybody that --

24 A. No, no.

25 Q. There is a question here. You served on a jury

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1 about twenty-five years ago in an aggravated assault  
2 case. Was that here in Harris County?

3 A. That was in New Orleans.

4 Q. New Orleans?

5 A. Uh-huh.

6 Q. And y'all reached a verdict and assessed  
7 punishment?

8 A. Yes.

9 Q. Anything about that case that would keep you  
10 from you being fair and impartial?

11 A. No.

12 Q. Now I want to talk -- well, on the last page  
13 there is an agree/disagree statement. And it asks about  
14 a couple of these. One is a statement, Life  
15 imprisonment is more effective than the death penalty.  
16 And you checked that you generally agree with that. Can  
17 you tell me what your thought was there?

18 A. Yes. I think that quite often in a violent  
19 crime that it's almost an easy out for the death penalty  
20 for the one who committed the crime. It would be worse,  
21 in my opinion, if I were that person to have to spend  
22 the rest of my life thinking about what I had done  
23 really and living the life in prison. I would rather be  
24 put to death quickly if I were, in fact, guilty than to  
25 serve the rest of my life under those circumstances.

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1 answering these questions up here and not upon deciding  
2 whether or not we think it's worse for them if we give  
3 life or death. I assume you would abide by the system?

4 A. Yes, sure.

5 Q. Any doubts about your ability to participate in  
6 a process; that is, be a juror where you would be called  
7 upon to make decisions; that is, answer questions up  
8 here, knowing that in answering those questions it could  
9 result in ordering this Judge to order the execution of  
10 the defendant sitting over here on trial? Anything  
11 about your disability to participate in that process and  
12 make that type of decision if that's what the law and  
13 the evidence called for?

14 A. No problem.

15 Q. All right. You mentioned in the  
16 questionnaire -- and I think a lot of people write this  
17 same statement -- I think the punishment ought to fit  
18 the crime. And I guess it might be that these questions  
19 up here expand that maybe a little. It ought to fit the  
20 crime and the person. There are two things we'll be  
21 talking about.

22 A. Sure.

23 Q. And that's the type of evidence you hear in the  
24 case. And I want to kind of jump to the punishment  
25 stage of the trial, because this is the only opportunity

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1 Q. And to expound on that, I think you hit on what  
2 a lot of people say, that this would -- if they were in  
3 this situation, obviously you might realize there may be  
4 some people who commit a crime and could care less?

5 A. Sure.

6 Q. Have no remorse, so living everyday with it  
7 ain't no problem; because they didn't care about you to  
8 begin with. See how that might work?

9 A. Absolutely.

10 Q. Another thing it says is, It doesn't make any  
11 difference to me whether or not we have the death  
12 penalty. You checked that you generally agreed with  
13 that. Can you tell me what your thought was there?

14 A. Whether we have it?

15 Q. Yeah.

16 A. Well, again, based on the fact that I think the  
17 worst punishment would be life in prison.

18 Q. Okay. All right.

19 A. But I could be part of imposing the death  
20 penalty. I have no objection to that. I'm just not  
21 convinced that is the best -- always the best  
22 punishment.

23 Q. Right. Now, you have now been explained the  
24 system which we use in making that determination. And I  
25 would suggest to you that that system is based on

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1 we get to talk to you about your feelings about that  
2 punishment stage. Guilt or innocence stage is most  
3 likely the guilt or innocence stage of the aggravated  
4 assault case you were on. You're here to decide whether  
5 the State has proven beyond a reasonable doubt all the  
6 elements of the offense that are set out in the  
7 indictment. If you find we've proven them beyond a  
8 reasonable doubt, you find him guilty. If you find he  
9 didn't, then you find him not guilty.

10 The punishment stage of a capital murder  
11 case is different than the punishment stage at any other  
12 crime, of any other case. Here you don't have a range  
13 of punishment from "X" number of years to "Y" number of  
14 years. Instead you have either life or death. And  
15 that's decided not by voting life or death, but by  
16 answering these questions. So, I want to spend some  
17 time talking about these questions.

18 Keep in mind, though, you don't get to  
19 those questions until you've already found someone  
20 guilty of capital murder. And at the punishment stage  
21 of trial, you may hear additional evidence that you did  
22 not hear at the guilt/innocence; evidence about a  
23 defendant's character, his background, his criminal  
24 history, or lack thereof, his mental abilities or  
25 disabilities; because that kind of information will be

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1 used in deciding what the -- what punishment the  
2 individual shall receive for the crime you've already  
3 found him guilty of.

4 Issue Number One then asks you, after  
5 hearing all of that evidence about the crime itself at  
6 guilt/innocence and about the individual himself at the  
7 punishment stage, then decide, do you find from all of  
8 that evidence beyond a reasonable doubt there was a  
9 probability -- doesn't say possibility; doesn't say  
10 certainty. It's in between there, kind of more likely  
11 than not that the defendant could commit criminal acts  
12 of violence -- whatever is criminal acts and whatever is  
13 violent -- that would constitute a continuing threat to  
14 society.

15 So, you're asked to determine, in your  
16 opinion, after hearing all the evidence, as the  
17 defendant sits before you that day, is this person  
18 likely to be the type of person who will be a threat to  
19 commit criminal acts of violence in the future? Okay?

20 A. Okay.

21 Q. More likely than not, there is a probability he  
22 would do that. What kind of evidence do you think would  
23 be helpful in making that type of determination?

24 A. If it has his background, his records.

25 Q. Right, okay.

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1 A. Well, his backgrounds, whatever that means. I  
2 don't know where it comes from, where he comes from,  
3 what all he's done.

4 Q. And, of course, it might be a determining  
5 factor about the facts of the case itself that you  
6 heard. You would know by the facts of the case what  
7 happened before, during, and after the crime. Was it a  
8 spur-of-the-moment crime, or was it planned and  
9 premeditated? Was the crime vicious and malicious and  
10 killing innocent people, or was there some tussle or  
11 relationship between the parties?

12 A. Right.

13 Q. What happened after the crime? Was the person  
14 braggadocious, or was he remorseful in turning himself  
15 in? And all those kinds of things. Any problem with  
16 answering that question, Issue Number One, either yes or  
17 no, depending upon what the facts may show in the case?

18 A. No.

19 Q. Now, some people think, well, if I have found  
20 someone guilty of capital murder, intentionally killing  
21 someone during the course of a kidnapping or  
22 intentionally killing two or more people during one  
23 criminal episode, which is the kind of cases we have  
24 alleged, that I would automatically or always then find  
25 that there is a continuing -- there is at least a

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1 probability that it be a continuing threat to society.

2 Other people, though, realize you have to  
3 look at the crimes -- the defendant, himself; because,  
4 you know, it might be important in making that  
5 determination about whether or not he would be a future  
6 threat; if he's never done anything before, if he's been  
7 a class act, a straight A student, a Boy Scout, a  
8 choirboy, whole nine yards. This may be an aberration  
9 in his life. Somebody else, this might be just another  
10 stepping stone along the way.

11 So, are you comfortable with the fact that  
12 you get to consider all of this, not only the crime  
13 itself, but also the individual in making that decision?

14 A. Absolutely.

15 Q. Now if you answer that question yes, then the  
16 defendant is going to receive the death penalty. And  
17 last, on Issue Number Two, you determine there are  
18 reason or reasons he should not. It asks you to go back  
19 and look at all of the evidence. And then it spells it  
20 out; the circumstances of the crime, the defendant's  
21 character and background, his personal moral  
22 culpability. I'd like to refer to it as his personal  
23 responsibility for the commission of the crime. And do  
24 you find there is sufficient mitigating circumstance or  
25 circumstances? I'd like to refer to it as sufficient

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1 reasons why this person ought to receive life as opposed  
2 to death. So, what it's asking you is -- because at the  
3 point in time you get to Issue Number Two, you would  
4 have already found a person guilty of capital murder.  
5 You would have found they're going to be a continuing  
6 threat to commit future acts of violence, at least to a  
7 probability.

8 And now you have to decide, are there any  
9 reasons there why we should give this person life as  
10 opposed to death? Because your answers to that point  
11 have indicated he should receive death. And it gives  
12 you that opportunity to re-examine the evidence and to  
13 change your mind from death to life, if that's what you  
14 think the evidence calls for, see if there is sufficient  
15 mitigating circumstances.

16 Example how that may happen is you may  
17 have heard during the trial that the defendant was high  
18 on drugs or alcohol. One juror may think, well, that  
19 mitigates towards a life sentence in my mind; because  
20 when you're high on drugs or alcohol, you do things you  
21 wouldn't ordinarily do. Juror Number 2 may say, wait a  
22 second. I know people who have been high on drugs or  
23 alcohol all their life, and they don't go commit capital  
24 murder. I don't think there is any relationship between  
25 the two.



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1 Two people have looked at the very same  
2 piece of evidence but come up with different opinions.  
3 That's okay, because that's what the question is asking  
4 you to do is to go back and for you to search through  
5 the evidence and see what's mitigating and what's not  
6 and for you to weigh it in determining what effect. Do  
7 you have any problem with that aspect of the law?

8 A. No.

9 Q. Same type of any -- a person's mental ability,  
10 a person's age. Somebody may think it's mitigating.  
11 Somebody may think it's not. It's just for you to make  
12 that determination, what -- in your mind, determine what  
13 effect it ought to have and determine what you think it  
14 should be given. Okay?

15 A. Uh-huh.

16 Q. What we're basically talking about is the  
17 ability of someone to take an oath, be a juror, and a  
18 true verdict render based on the law and the evidence.  
19 Wherever the law and the evidence leads you, that's  
20 where you ought to go. If you find a person not guilty,  
21 you find them not guilty. If you find a person guilty,  
22 you find them guilty. Just answer these questions in  
23 such a way life would result, so be it; or if death  
24 results, so be it, just where the law and the evidence  
25 leads you. Okay?

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1 A. Okay.

2 Q. Any problem with that aspect of the law?

3 A. No.

4 Q. Any reason to believe you have any preconceived  
5 notion at this point in time as to what you would do in  
6 a capital murder case, or would you have to wait and  
7 listen to all the evidence?

8 A. Surely, yes, sir.

9 Q. All right. Thank you, Mr. Evans. I appreciate  
10 your time, and I'm going to pass you to the other side.

11 THE COURT: Thank you, sir.

12 Mr. Wentz.

13 VOIR DIRE EXAMINATION

14 BY MR. WENTZ:

15 Q. Good afternoon. As you've been told, my name  
16 is Kurt Wentz. Wayne Hill is not with us at this time.  
17 And this is Mr. Charles Mamou. I'd like to ask you some  
18 questions. As I go about asking you questions, I would  
19 be very grateful if you would tell me the reasons that  
20 you're answering them in a way that you do. So right  
21 this minute, and for the next fifteen minutes or so, I'm  
22 as interested in your reasons for answering the  
23 questions as the answers themselves. And let me, first  
24 of all --

25 MR. WENTZ: May I stand, Your Honor?

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1 THE COURT: Surely.

2 BY MR. WENTZ:

3 Q. You filled out a questionnaire, and you had the  
4 opportunity to go through -- this is your questionnaire.  
5 If you'd like to look at it, it may help us as we go  
6 through it. Share with us your feelings about the death  
7 penalty. And I think if you go to Question 58, that  
8 just generally addresses the subject.

9 A. Well, I'm not passionate one way or the other  
10 about the death penalty. If it is the law, Texas law,  
11 that it shall be imposed in certain circumstances,  
12 again, I can listen to the evidence and make the  
13 decision accordingly. I have no particular religion or  
14 moral or other reason not to vote in favor of it, or  
15 specifically, to vote one way or the other.

16 Q. When you were given that question to respond  
17 to, did you have any idea that our death penalty system  
18 operated in the manner in which it does? Did you know  
19 about these Special Issues?

20 A. No.

21 Q. So you were just basically saying, you do  
22 something wrong, death penalty. You didn't know about  
23 the Special Issues?

24 A. No; but I assumed that the Court would give me  
25 the instructions, you know, that would tell me how it

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1 works at the time. And I could make a decision based on  
2 those instructions. At least, I assume that I could.  
3 I've never done this.

4 Q. So, Page 12, you've sort of touched on this  
5 already. You're asked, What do you believe the most  
6 important purpose of punishment is in a criminal case?  
7 And you've got -- that's 62. And on 63, What is the  
8 best way to achieve that purpose? And it talks about  
9 punishing the accused, making the punishment fit the  
10 crime, and the obvious follow-up to that.

11 Inasmuch as we're talking about the  
12 intentional taking of a life, does that mean that that  
13 person's life should be taken? Could you visit with me  
14 a little bit about your thoughts and views on that?

15 A. Not necessarily. I really don't believe in an  
16 eye for an eye, but I do not -- of the three choices  
17 there, I chose retribution. I don't believe that giving  
18 the death sentence to one person will deter the next  
19 one. I don't believe the guy on the street is going to  
20 think about that or care about that in his moment of  
21 passion, or for whatever reason he's committing a crime.  
22 So I don't believe that prison is much of a place for  
23 rehabilitation for most people. Maybe for a select few  
24 it works; but for the majority, I feel that it is not a  
25 very good place to be rehabilitated.

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1 Q. I'd like to follow up with you on that; because  
2 on the very next page, Page 14, you were asked a  
3 question: Agree/disagree; prison makes convicted people  
4 worse. And you agreed with that statement. And I think  
5 you possibly can anticipate my question. If you believe  
6 that prison does make people worse, well, isn't that  
7 some sort of added justification for the death penalty  
8 being received by that person?

9 A. Well, no, not necessarily. By saying it may  
10 make them worse, I don't think that, in general, it  
11 makes them great. What I have seen, the people that  
12 I've known, including my own son -- ex son-in-law that I  
13 have talked about in this, who has been through the  
14 system for a few years, he's picked up more new tricks.  
15 It's like going to grad school probably for him, dealing  
16 with others who think the way he does and associating  
17 with accomplished criminals, if you will. I don't think  
18 that any attempt was made to rehabilitate him. He was  
19 just put away.

20 And you hear about the rare case perhaps.  
21 I don't know if it's rare or not; but once in awhile on  
22 TV, the exceptional cases where somebody has been  
23 rehabilitated and gone on and gotten their college  
24 degree, advanced degrees, and really changed their whole  
25 outlook on life. But I doubt, as a whole, that that is

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1 they may have proven a kidnapping, but not necessarily  
2 that the person took that person's life wherein the  
3 person would be guilty of aggravated kidnapping or  
4 kidnapping.

5 Or you might have a situation where you  
6 didn't feel that the two deaths were the result of that  
7 occurrence within a criminal transaction, and there  
8 would be a finding of murder. When you get to the point  
9 where you do believe the State has met its burden of  
10 proof, that person, in my mind -- or you've made a real  
11 important decision that that person is guilty of  
12 society's worst crime, and you've branded them a capital  
13 murder criminal for all of us.

14 And you come to the second part of the  
15 case, and you come to consider these Special Issues.  
16 And you've had a situation with your son-in-law. Can  
17 you tell us -- I think you've indicated that he was  
18 involved with sex with a minor?

19 A. Yes.

20 Q. Had he been convicted of that when you came to  
21 know him, or is this something that occurred after he  
22 became, if you will, a member of the family?

23 A. He was my son-in-law at the time and,  
24 basically, got too friendly with the teenager in the  
25 neighborhood.

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1 going to be the case for most of the prison population.

2 Q. Were you aware of the forty-year minimum for  
3 somebody who was convicted of capital murder and  
4 received a life sentence?

5 A. No.

6 Q. How long was your son-in-law in prison?

7 A. He was sentenced for eight years. He possibly  
8 served -- I don't remember exactly when he went in, but  
9 maybe four, something like that.

10 Q. Let me visit with you a little bit. And a lot  
11 of this at this point -- I'm going to repeat something  
12 that the Judge said this morning, and I don't mean to  
13 take up your time. But he talked to you about looking  
14 at the case, determining the conduct that you heard in  
15 determining whether or not the State had met its burden  
16 of proof, beyond a reasonable doubt. Namely, was a  
17 capital murder committed, or was some other type of  
18 crime committed?

19 And you know that capital murder involves  
20 two situations, the intentional taking of somebody's  
21 life in the course of another felony, such as  
22 kidnapping, or taking two people's lives in the course  
23 of the same transaction. And it's quite possible to  
24 listen to that evidence and come to the conclusion that  
25 the State may have failed in its burden of proof; and

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1 Q. And he was already your son-in-law?

2 A. Yes, with children, two of my grandchildren.

3 Q. Had you ever expected that to happen?

4 A. No, never.

5 Q. Came as a shock to you?

6 A. Sure.

7 Q. Because I will say that sometimes we see people  
8 we know people; they may be our friends. When they do  
9 something wrong, it doesn't surprise us. That's a sad  
10 thing to say, but there are those situations where you  
11 may know somebody and you feel it's going to happen  
12 anytime now. But it was a surprise in that particular  
13 instance?

14 A. Well, to some degree. I suppose -- I'm looking  
15 back on it now, and I know him better now than I did at  
16 the time. This time I guess it was a surprise. Looking  
17 back on it, I guess, now I could say that, well, maybe  
18 it shouldn't have been such a surprise.

19 Q. And I think you've indicated in your responses  
20 in the questionnaire, Questions 33, 38, and 39, that he  
21 received probation, and he continued to do other things  
22 and he had his probation revoked?

23 A. He totally disregarded -- he had no regard for  
24 authority, and that's the basic problem with his whole  
25 life. But he continued to flunk the attitude and



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1 eventually got caught. And he asked the Judge for  
2 probation again, another chance. And he said, No,  
3 you've already had your chance. You're off to jail.  
4 So, it was his own doing.

5 Q. Let me ask you this: In this situation he  
6 picked up the case. It came as a surprise. It came as  
7 a shock to you. At some point he became identified to  
8 you as somebody who had unfortunately done something  
9 wrong. And then you, knowing him, knowing his problem,  
10 you saw him violate his probation. At that point, when  
11 you saw he had done something wrong, he had been  
12 convicted of doing something wrong, did you anticipate  
13 he would ever violate his probation, or is this  
14 something that came as a surprise to you?

15 A. No surprise that he would do that. Again, lack  
16 of respect for authority. Just thought he was above it  
17 all.

18 Q. Special Issue Number One sort of addresses your  
19 attention to that particular problem, because you've  
20 found somebody guilty of capital murder. And at the  
21 very least, at the punishment phase you're going to take  
22 that evidence with you into the jury room and answer  
23 that question. And I guess the point that I had have to  
24 address with you is, having made that type of decision,  
25 having received that information, and also, you know,

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1 from your own background, do you feel that person is  
2 then going to be a future danger to society?

3 Because that's the way I sort of look at  
4 Special Issue Number One. Is the person, more likely  
5 than not, going to do criminal acts of violence in the  
6 future? And, you know, given your experience, given the  
7 fact that you've now, for your own personal purpose in  
8 this case, found this person guilty of capital murder,  
9 do you feel that person is always going to be a future  
10 danger.

11 A. When we get into the second question and learn  
12 more about his background, I will have perhaps a totally  
13 different view.

14 Q. Okay. But I'm going to go -- I'm going to sort  
15 of go by the numbers, and I'm just going to talk about  
16 Special Issue Number One right now. Having found  
17 somebody guilty of capital murder, does that mean for  
18 you that they will always be a danger in the future?

19 A. Not necessarily. It depends on the evidence  
20 you've presented to get me to that point. What else  
21 have you told me about him or her?

22 Q. Let's just assume for the purpose of our  
23 conversation right this minute that you haven't received  
24 any more information. You have taken all of this  
25 information that's convinced you beyond a reasonable

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1 doubt that he intentionally killed somebody and that  
2 intentional killing occurred in the way that a capital  
3 murder occurs.

4 And then you had -- you're sitting in  
5 punishment of him. You're considering just that  
6 evidence. You may get more certainly, but you'll always  
7 have at least that. Are you saying, then, that Special  
8 Issue Number One, for you, is then answered  
9 affirmatively, yes, he would be a future danger to  
10 society, that there is a probability he would commit  
11 criminal acts of violence in the future?

12 A. It's hard to answer.

13 Q. Let's focus on One at this time.

14 A. Just Question Number One?

15 Q. Yeah?

16 A. Well, presumably the answer is, yes, I have  
17 found, based on the evidence presented, that I believe  
18 he's a continuing threat to society.

19 Q. Would you do so if you found him guilty of  
20 capital murder?

21 THE COURT: Automatically.

22 THE WITNESS: No. That's what I'm trying  
23 to say, is not automatically. I need to know more  
24 information about him? Is this an isolated case? Or  
25 he's a choirboy for the rest (sic) of his life; and all

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1 of a sudden, whatever happened when this occurred, I  
2 need to know that information.

3 And Question Number One may have presented  
4 the evidence that he had did, in fact, do the crime; but  
5 without further evidence about what led up to it and the  
6 background and attitude and all these things, I can't  
7 tell you whether I think he'll do it again or be a  
8 continuing threat. So, I need more information. And  
9 so, I guess the answer is, I will not automatically,  
10 just because he's guilty of this crime -- I guess my  
11 answer is that not automatically will he be a threat,  
12 continuing threat.

13 Q. Now, you understand it's the State's burden to  
14 prove that? I do not have to prove that he will not be?

15 A. I understand.

16 Q. And you also understand I don't  
17 have to prove that to you beyond a reasonable doubt?  
18 In other words, if there is any reason to hesitate upon  
19 the State's proof, you should answer that question, no,  
20 he's not going to be a future danger. And when you look  
21 at this Special Issue, I think it also asks you just not  
22 whether or not he's going to do something wrong; but  
23 what he's going to be doing wrong, in your opinion, is  
24 of such magnitude that it would be an act of violence  
25 that would constitute a continuing threat to society.

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1 In other words, you can do wrongful acts  
2 that are totally disrespectful of authority. If you  
3 could be on probation and not respect authority and,  
4 let's say, not report to your probation officer -- I'm  
5 just using that as an example. And that would be a  
6 disrespect of authority, but it wouldn't necessarily be  
7 a criminal act of violence. Do you see?

8 A. Sure.

9 Q. And, of course, your being in the military,  
10 often when you're in the military, you have a lot of  
11 rules and regulations that you have to live by that you  
12 don't when you return to civilian life. And it's quite  
13 possible that in the course of being in the military,  
14 you could violate one of these rules that you have to  
15 live under. I think I wasn't allowed to have a mustache  
16 beyond the corners of my lip if I'm not mistaken.  
17 You'll get written up for that. Obviously, that's  
18 something wrong within the context of being in the Army;  
19 but it's certainly not a criminal act of violence.

20 A. Sure.

21 Q. Do you understand -- do you think it's a good  
22 idea that they require you to prove that the Special  
23 Issue requires that level of violence, that level of  
24 danger to society?

25 A. Yes.

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1 Q. And I just have two more questions for you.  
2 When you look at Special Issue Number Two, you've  
3 indicated that you could consider mitigating evidence,  
4 in your questionnaire. Could you also consider the  
5 nature of the crime? Because that's one of the things  
6 that asks you, Where is this mitigating evidence to be  
7 found? Within the circumstances of the offense,  
8 defendant's character, as well as his criminal  
9 responsibility. There may be something about the crime  
10 that causes you to say, well, gosh, you know, this  
11 is -- there is something there. For me, life is the  
12 appropriate thing. Do you have any problem with Special  
13 Issue Number Two?

14 A. None at all.

15 Q. Why not?

16 A. One thing, I've considered myself in that  
17 position. I have a concealed carrying weapons license.  
18 I don't carry it, but I could. And if I were to come to  
19 the aid of someone or to defend my own family or myself  
20 from violence and ended up perhaps shooting somebody, I  
21 certainly would go to trial and whatnot. I would hope  
22 that somebody would consider my background and  
23 mitigating circumstances under which I committed that  
24 crime, defended myself. So, yes, absolutely believe it.

25 Q. Is there anything you'd like to tell me about

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1 yourself before I sit down?

2 A. No. I think you pretty well see it all now. I  
3 did want to mention that I have the concealed carrying a  
4 weapons license. That last question, I didn't know  
5 whether I should have or should not have mentioned it,  
6 if it means anything or if you care, but that was all.

7 Q. Thank you very much.

8 THE COURT: Thank you, sir.

9 Mr. Evans, in just a second I'm going to  
10 excuse you. Before I do, I will tell you that we want  
11 you back Wednesday, the 29th of September, which I  
12 believe to be two weeks from tomorrow. In just a second  
13 I'll give you a piece of paper about that, before you  
14 leave. So, before you leave, I'll tell you that we're  
15 talking to folks individually. We're going to create a  
16 panel of about forty-eight people. Every single person  
17 will have been through exactly what you've been through.  
18 On the 29th of September, if we get started on time,  
19 which is 9:30, we ought to be out of here by noon. When  
20 we finish that day, everybody will leave here knowing  
21 whether they are or are not a juror in the case.

22 Between now and when we see you again,  
23 don't you alter your lifestyle one bit for us. You do  
24 your professional things just exactly like you would  
25 ordinarily do them, your family things the same way. If

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1 you have a chance to leave town between now and then,  
2 take the chance. All that we ask of you between now and  
3 when we see you next is this: Please don't talk about  
4 this case with anybody. Please do not permit anybody to  
5 talk about this case with you.

6 I don't know if there will be any  
7 additional media coverage about this case between now  
8 and when we get together next; but if there is anything  
9 about the case in the media, avoid it. If there is  
10 anything on the television, refuse to watch it; radio,  
11 refuse to listen to it; and newspaper, refuse to read  
12 it.

13 If you do become a juror in the case, the  
14 decision you reach must be based exclusively upon the  
15 information you received from within the courtroom. If  
16 you need anything for anybody to show where you have  
17 been for the three days you've been with us, that will  
18 take care of that aspect of it. This is a reminder note  
19 as to when and where you will be at about 9:30 on  
20 Wednesday, the 29th. Whatever it says on there is  
21 accurate.

22 Before you leave, have you any questions  
23 for me? Thank you very much. You're excused.  
24  
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1 MICHELE BEASLEY,  
2 having been first duly sworn, testified as follows:

3 VOIR DIRE EXAMINATION

4 BY THE COURT:

5 Q. I ask you to remember back, Miss Beasley, and  
6 the things we talked about and to this morning. Out of  
7 everything we have talked about so far, do you have any  
8 questions at all for me?

9 A. No, sir.

10 Q. Is there anything to this point that we have  
11 not yet addressed that you feel as though we should  
12 because it might have some bearing on your service as a  
13 juror in this case?

14 A. No, sir.

15 Q. Is there anything at all, Miss Beasley, that  
16 you can think of, whether it be something about your  
17 personal life, or whether it be something about your  
18 professional life, whether it be something about your  
19 health, or something entirely different that you feel,  
20 in any way, would interfere with your ability to be a  
21 juror in this case during the time frame we're talking  
22 about?

23 A. No, sir.

24 Q. I believe, Miss Beasley, this phase of the  
25 trial is meant to do two things; to share with the

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1 A. Right.

2 Q. We talked earlier today, and I want to spend  
3 just a second to separate some things. We talked to you  
4 this morning about how a trial like this can unfold.  
5 Jury goes out the first time to decide whether the  
6 defendant's guilty or not. If the jury finds the  
7 defendant guilty of capital murder, that means  
8 necessarily they will have found that the person on  
9 trial intentionally took the life of another human being  
10 without any legal justification or excuse during the  
11 course of another major felony. Was it you that asked  
12 the question?

13 A. Uh-huh.

14 Q. We come back to the second phase of the trial,  
15 and you get to hear information at the second phase of  
16 the trial that gets -- again, the focus gets off the  
17 offense committed and gets onto the person that  
18 committed it; that is to say, the character, the  
19 background, and so forth.

20 It may very well be in some hypothetical  
21 case that based upon all the evidence in the case the  
22 jury, after having found a defendant guilty of capital  
23 murder, might find that all of the evidence in the case  
24 also supports a yes answer to that first question, that,  
25 in fact, because of the circumstances of the particular

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1 prospective jurors the rules that could conceivably come  
2 into play during the course of a trial like this;  
3 because we want to know, will the jurors that we select  
4 be able to follow and enforce these rules if the jurors  
5 believe the testimony that has caused these rules to  
6 come into play?

7 Is there anything you've heard so far  
8 about what we've talked about, about which you have some  
9 disagreement.

10 A. No.

11 Q. Do I understand, then, that you are making the  
12 comment to me that if you were a juror in the case, not  
13 only could you follow the laws that we've talked about,  
14 but also, as a juror, enforce them?

15 A. Yes, sir.

16 Q. The second aspect of this operation, Miss  
17 Beasley, is for you to satisfy yourself, for the lawyers  
18 to be satisfied, that if you become a juror in this  
19 case, you sit back in any one of those twelve chairs,  
20 listen to all of the information the lawyers give to  
21 you; then you evaluate that information however you see  
22 it, and you come up with what you think is the right  
23 result to reach based upon how you evaluate the  
24 information they give to you. Does that sound right,  
25 Miss Beasley?

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1 case a person, a juror, does believe that the defendant  
2 would be a future -- future threat to society.

3 A. Uh-huh.

4 Q. So, now, what's your posture in this imaginary  
5 case that I'm conjuring up? We're now in the posture of  
6 a jury having found a defendant guilty of capital  
7 murder. Obviously, having also been found unanimously  
8 that the defendant on trial is such a disgusting person  
9 that you know he's going to be a future threat to  
10 society. But can you see how that's not the end?

11 A. Uh-huh.

12 Q. But still, there may be features in the case  
13 that might be -- might rise to the level that makes you  
14 think that even though you found him guilty of capital  
15 murder, even though you're satisfied he's a future  
16 threat to society, that maybe you think a life sentence  
17 might be more appropriate.

18 So, what I'm simply saying is that each of  
19 those three verdicts that you're going to ask to  
20 return -- that is, guilty/not guilty in the first phase.  
21 You answer the first question. You answer the second  
22 question. They are all independent of each other. And  
23 by that I mean that just because one verdict you return  
24 in one way, it has no bearing on how you should answer  
25 either one of those two questions. And how you answer



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1 either one of those two questions has no bearing on how  
2 you answer the other question. Can you see how that is  
3 all independent of each other?

4 A. Right.

5 Q. Before we begin, have you any questions for me?

6 A. No, sir.

7 Q. Okay.

8 THE COURT: Mr. McClellan.

9 MR. MCCLELLAN: Thank you, Your Honor.

10 VOIR DIRE EXAMINATION

11 BY MR. MCCLELLAN:

12 Q. Miss Beasley my name is Lynn McClellan. Along  
13 with Claire Conners, we represent the State of Texas in  
14 this case. I wanted to kind of go over your  
15 questionnaire and go over some of your answers there and  
16 talk about some aspects of the law that might apply in a  
17 case like this, and then I think we'll be through.

18 First of all, I appreciate the information  
19 that you gave us in the questionnaire. The  
20 questionnaire contains a lot of personal information  
21 that, obviously, you did have to share that we would not  
22 have known otherwise; and I appreciate that.

23 Having been a person addicted to drugs in  
24 the past and now having been off that for a long period  
25 of time, is there anything that you think we ought to be

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1 a person getting the death penalty. So, do you agree  
2 with the process or that type of setup, where it's set  
3 up to where not everyone who is guilty of capital murder  
4 will always receive the death penalty? You have to  
5 examine all the facts and circumstances of not only the  
6 crime, but of the individual's background?

7 A. Yes, sir. I don't think I was aware of the  
8 Issue Number Two before this process.

9 Q. And I'm sure you had no reason to be. I don't  
10 know that anybody is. If they were aware of it, I'd  
11 like to know why; because it's not something that would  
12 usually come out, I think.

13 In your questionnaire, you also  
14 answered -- there is a list of agree/disagree. And it  
15 says, The death penalty is always justified for an  
16 intentional murder. And you agreed to that. Of course,  
17 now you know that every murder is an intentional murder.  
18 I mean, that's the definition of murder.

19 A. Yeah.

20 Q. Murder is the intentional taking of another  
21 person's life. So, there are no unintentional murders,  
22 accidental murders; because they're not murders if  
23 they're that. Do you believe that everybody who commits  
24 murder ought to receive the death penalty?

25 A. No, based on what the circumstances were.

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1 concerned about or that you think would affect your  
2 ability to serve as a juror in a case? Obviously, many  
3 times crimes revolve around drugs. Anything about that  
4 that you think would affect your decision in a case like  
5 this?

6 A. No, sir.

7 Q. Okay. In your questionnaire there was a couple  
8 of things I wanted to talk about. You said -- What are  
9 your feelings about the death penalty? And you said, In  
10 the cases where someone murdered an innocent person or  
11 several murders, I believe in the death penalty. I  
12 guess the argument could be made that in every capital  
13 murder case, or in many capital murder cases, the person  
14 is going to be innocent.

15 A. Meaning -- what you mean by innocent?

16 Q. Whether they're deserving, or whatever type  
17 situation. Obviously, if I kill someone in  
18 self-defense, it's not capital murder. It's a not  
19 guilty. If I kill somebody by accident, it's again not  
20 a crime. So, capital murder is the intentional taking  
21 of another person's life without any legal  
22 justification. So conceivably, you could say that  
23 person was innocent, as far as not deserving to die, but  
24 not of capital murder. As you know now, according to  
25 the way you've seen the system is set up, will result in

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1 Q. Right. A lot of people have come to us from  
2 time to time on jury duty, and I think it's common  
3 whenever you -- whenever you think of capital murder, I  
4 assume you're thinking of something pretty bad. If  
5 somebody's thinking of murders, they're thinking of  
6 something pretty bad. There is literally thousands of  
7 situations that constitutes murder or capital murder;  
8 and you couldn't think of them all, and I couldn't think  
9 of them all. And that's why you have to wait and hear  
10 what the facts and circumstances are before you make  
11 your decision.

12 Just like the Judge talked to you, in a  
13 murder case, the range is from ninety-nine years -- five  
14 years to ninety-nine years, or life. Sometimes we get  
15 people that say, I could never consider five years. And  
16 I'm going, how do you know? You don't know what the  
17 facts are. And how could you have already decided  
18 without knowing the facts? And you're going to figure  
19 out you can't. But when you're thinking of something in  
20 your mind, when you think of murder -- and you're not  
21 thinking of some real nice situation when you think of a  
22 bad situation. You may think it's common or uncommon  
23 that people are thinking the worst explanations.

24 But you see through the system that's set  
25 up here, you have to consider all the facts of the

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1 crime; and that might give you reason to believe the  
2 death penalty shouldn't result. You also get to hear  
3 about all the individual's -- his character, background,  
4 criminal history, or lack thereof, mental abilities,  
5 disabilities, all kinds of information about the  
6 individual himself that may also indicate whether or not  
7 they should receive the death penalty or not.

8 Many years ago in South Carolina there was  
9 a lady named Sue Smith, who put two kids in the backseat  
10 of her car and rolled it off into the lake and killed  
11 the two children, reported somebody else had done it or  
12 whatever. She was convicted of capital murder, but she  
13 received a life sentence. As horrible as that crime  
14 was, jurors might have decided that there was not -- she  
15 was not a continuing threat to commit future acts of  
16 violence; because it wasn't likely she would do anything  
17 like that again, or she was not a threat to go out and  
18 commit robberies or other acts of violence.

19 And I don't know if they have that issue  
20 or not, but it could cause you to conceivably think  
21 that -- you have to look at a person's background. And  
22 if this act you did is horrible and it's capital murder  
23 doesn't mean -- I mean, it could mean that is a total  
24 aberration of the rest of his life. You have to look at  
25 that and weigh all the circumstances. All that is to

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1 instance, if he's an innocent bystander or someone they  
2 knew, violence of the crime, and all the evidence of the  
3 mental state. In other words, you think of all kinds of  
4 things you would need to know in making that type of  
5 determination as opposed to just saying capital murder/  
6 death. We don't have that. And if that's the way you  
7 believe, that's fine. We just need to know you'll set  
8 that aside if that's what you believe or if you don't  
9 believe that. We have to follow the law and the  
10 evidence. Some people can. Some people can't. We just  
11 need to know if you can.

12 A. I can. In all honesty, I was in a very big  
13 hurry when I was filling that thing out.

14 Q. You and a bunch of other people, I imagine,  
15 except they knew as soon as you finish this, you get to  
16 go home for the rest of the day.

17 Let me see here. Anything about you or  
18 your opinions or beliefs that you think I ought to be  
19 concerned about, being the State of Texas? Obviously,  
20 we're seeking the death penalty in this case. We're  
21 going to try to convince jurors the defendant is  
22 convicted of capital murder and the answers ought to be  
23 yes and no, since the death penalty applies.

24 All I look forward to is jurors that will  
25 give us a shot and listen to all that evidence and call

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1 say, you have to wait until you hear all of the facts  
2 until you can ever really decide what the appropriate  
3 punishment is and how you would answer any of these  
4 questions.

5 A. Yes, sir.

6 Q. You agree with that?

7 A. Yes, sir.

8 Q. Of course, if a person was asking you on the  
9 street, what's your opinion about this and what's your  
10 opinion about that, people have opinions. And that's  
11 fine and, you know, it's no problem having them. But if  
12 you find that your opinion conflicts with what the law  
13 is, you have to be able to set it aside and follow the  
14 law.

15 Some people say, I can't do that. I'm  
16 going to follow my opinion, and I don't care what the  
17 law is. We just need to know of people who can take an  
18 oath to a true verdict render based on the law and the  
19 evidence. Are you that type of person?

20 A. Yes, sir.

21 Q. It's like this question, I guess. It says,  
22 What things do you think are important in deciding  
23 whether or not the person should be sentenced to the  
24 death penalty or life imprisonment? And you put  
25 criminal history, the crime, who the crime was on. For

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1 it the way they see it. And do I have a shot with you  
2 to listen to that evidence and call it the way you see  
3 it?

4 A. Yes, sir.

5 Q. Thank you, Miss Beasley. I appreciate it?

6 THE COURT: Thank you.

7 Mr. Hill.

8 MR. HILL: Thank you, Judge. I'm sorry.

9 VOIR DIRE EXAMINATION

10 BY MR. HILL:

11 Q. How are you today?

12 A. Fine.

13 Q. I just have a couple of questions that will  
14 really get right to the matter from the defense  
15 perspective. Obviously, Mr. McClellan and Miss Connors  
16 have a view of you; and they want to know a prospective  
17 juror can look at a case. And in all fairness to you,  
18 both sides aren't looking for a fair and impartial  
19 juror. They're both looking for a juror that will be a  
20 little bit fairer to their side.

21 So, Mr. McClellan gave you an example of  
22 Susan Smith in South Carolina. How did you feel about  
23 that when you heard about that verdict in the news? Did  
24 you have a particular feeling one way or the other when  
25 she received life?



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1 A. When I initially heard about the story, yeah,  
2 or at any point. I thought it was horrible that a  
3 mother could do that.

4 Q. Okay. Do you see where whoever had the  
5 responsibility for ultimately sentencing her had to make  
6 that decision based on all the facts that they had at  
7 their disposal?

8 A. Yes, sir.

9 Q. Would you agree with the proposition that it  
10 would be unfair for other people to criticize that  
11 Judge's or that jury's finding since they're the ones  
12 that sat there and listened to everything from start to  
13 finish?

14 A. Yes.

15 Q. Okay. Give me a few reasons why, as I'm  
16 sitting here as a defense attorney, Mr. Wentz and I,  
17 when we sit down and discuss it should say, Miss Beasley  
18 is somebody that we're all comfortable with. She's  
19 really going to be the type of person who, in all  
20 fairness, may not give us extra fairness; but she's  
21 going to be somebody that we don't have to fear carries  
22 a particular agenda with her as she sits in one of these  
23 seats. So, can you think of anything that would make us  
24 feel more comfortable?

25 A. I just think I'm a pretty fair person. I don't

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1 helpful to hear about the background?

2 A. Uh-huh, yes.

3 Q. How come?

4 A. Because it kind of lets you know what kind of  
5 person they've been up to that point.

6 Q. If you were a person on trial for capital  
7 murder, you were my client today, okay, jury's just  
8 found you guilty, what would you want the jury to know  
9 about you?

10 A. The good things.

11 Q. Well, would you want them to know about things  
12 you had to work through in your life to show what  
13 adversities you faced?

14 A. Yeah, and the fact that I got through them,  
15 yes.

16 Q. Were there other people that you knew that had  
17 similar problems that didn't get through?

18 A. Uh-huh.

19 Q. What type of questions would you have of me  
20 about this process?

21 A. I don't think I have any.

22 Q. Did you have any particular feelings when you  
23 finished filling out the questionnaire; you knew you  
24 were going to be coming down here today and be  
25 questioned? Were there any things that ran through your

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1 judge people by their race or by their sexual preference  
2 or anything like that. I think everybody is a person,  
3 and you should be fair with everybody.

4 Q. Do you feel that the way Texas has this system  
5 set up for determining for those people who are  
6 convicted of capital murder -- do you think this is a  
7 fair system about how to go about doing it?

8 A. Yes. As a matter of fact, I didn't realize  
9 that their backgrounds could be considered.

10 Q. Okay. Do you think background necessarily  
11 talks about bad background, good background, or the  
12 entirety of their background?

13 A. The entirety.

14 Q. Most people, when they come down here, when  
15 they talk about background right away, they're thinking  
16 in terms of, I'll bet you there is something about this  
17 particular defendant that, you know, I should hear at  
18 some point and maybe I'm not going to hear about at the  
19 guilt stage. And I just need to know whether or not you  
20 have any of those thoughts or concerns at all?

21 A. I'm sorry?

22 Q. Sometimes people come down and say, oh, we're  
23 going to hear about their character or their background.  
24 People are concerned sometimes that they don't get to  
25 hear about that information. Do you think that's

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1 mind about this type of case or the allegations,  
2 specifically, that's been made against Mr. Mamou?

3 A. No, not really.

4 Q. Give me just a minute. There is a couple of  
5 questions that you answered on the questionnaire  
6 regarding the death penalty. Talked about what was  
7 the -- what was one of your arguments against the death  
8 penalty? And I noticed that that was left blank. Could  
9 you kind of fill in the blank for me, if you will?

10 A. Against the death penalty? I don't know that I  
11 have one. I mean, I don't know that I have an argument  
12 against it.

13 Q. Would you consider yourself a strong proponent  
14 of the death penalty?

15 A. I don't really consider myself strong one way  
16 or the other about it.

17 Q. Okay. Sometimes that might be an unfair  
18 question, to ask for somebody to kind of come up with an  
19 argument against it, so -- it did say, though, what are  
20 your feelings about the death penalty? In the cases  
21 where someone murdered an innocent person or several  
22 murders, I agree with the death penalty. And you said,  
23 The best argument for the death penalty is prison  
24 overcrowding. If a person in his right mind knowingly  
25 killed another, especially repeat offenders, he should

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1 get the death penalty. How does prison overcrowding  
2 come into that? What were you thinking about?

3 A. I guess like if it was a repeat offender, or  
4 they killed -- when I say innocent person, I'm talking  
5 about like a child or an innocent bystander. It wasn't  
6 an ex-spouse they were fighting with.

7 Q. Okay. What did you think when Judge Burdette  
8 mentioned this morning, specifically addressing what  
9 life in Texas means? Did that perhaps answer some of  
10 the concerns that you may have expressed in the  
11 questionnaire here. I don't know if you remember all  
12 the questions that were asked, but a couple of them --  
13 one was people were getting out of prison on good  
14 behavior.

15 A. You mean when he talked about forty years with  
16 no --

17 Q. Yes. I mean, are you left with any concern?  
18 Because this is the only time we're going to get to know  
19 it. If you're going back to the jury room, if you found  
20 somebody guilty of capital murder, are you going to sit  
21 there and say, My God, you know, forty years is a long  
22 time; there is the possibility somebody could be  
23 released at the 40th year or the 41st year, would that  
24 enter into your deliberations at all in evaluating the  
25 answers to those questions?

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1 A. The fact he was released after forty years?

2 Q. No, the fact he might be released after forty  
3 years.

4 A. No, that wouldn't affect the way I answered it.

5 Q. You would answer the questions based on the  
6 evidence? And don't speculate; because as Judge  
7 Burdette said, one scenario is he would serve the rest  
8 of his remaining life in prison. And another is, it's  
9 just speculation; because we don't know what any  
10 executive board might do.

11 A. Right.

12 Q. The last area I just want to ask you about real  
13 quickly is when Mr. McClellan was posing the questions  
14 to you about the answers to these questions, he snapped  
15 his finger and kind of said, you know, you wouldn't do  
16 things automatically. I just need to know whether or  
17 not in the real world you were faced with a situation,  
18 given any kind of capital murder case, understanding  
19 what that is, that you had found a person guilty of --  
20 beyond a reasonable doubt of capital murder.

21 And you're now at the punishment stage,  
22 and you believe beyond a reasonable doubt that a person  
23 is, in fact, going to be a continuing threat to society.  
24 At that point are you basically saying to us that  
25 Question Number Two would always have to be answered no.

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1 In other words, you could never find any set of  
2 circumstances or a circumstance that would be sufficient  
3 mitigation to result in a life sentence. In other  
4 words, the combination of finding the person guilty of  
5 capital murder beyond a reasonable doubt and whatever it  
6 is that convinced you that Question Number One is yes,  
7 you've answered that yes.

8 A. Would I have to answer Number Two yes? Would I  
9 feel like I had to answer it yes?

10 Q. Would you feel like you have to answer it no,  
11 because a no answer --

12 A. No, I wouldn't feel that way.

13 Q. No questions of me?

14 A. Huh-uh.

15 MR. HILL: Thank you, Judge.

16 THE COURT: Thank you.

17 Miss Beasley, in just a second I'm going  
18 to excuse you. Before I do, I will tell you that we  
19 want you back two weeks from tomorrow, which is  
20 Wednesday, the 29th. I'll give you a piece of paper  
21 with the information in just a second. What we're doing  
22 is talking to folks individually for the purposes of  
23 creating a pool or panel. There is going to be about  
24 forty or so people here on the 29th of September.  
25 Everybody will have gone through exactly what you've

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1 been through. If we could get started on time that day,  
2 that being 9:30, everybody ought to be out of here by  
3 noon.

4 When we leave on the 29th of September,  
5 everybody will leave here knowing definitely whether  
6 they are or are not a juror. Between now and when we  
7 see you in two weeks, don't alter your lifestyle one bit  
8 for us. You do your personal life exactly like you're  
9 doing, your professional things just like you're doing.  
10 If between now and when we see you next, if you have a  
11 chance to leave town for a while, take a chance.

12 All that we do ask of you between now and  
13 when we see you next is this: Please do not talk about  
14 this case with anybody. Please do not permit anybody to  
15 talk about this case with you. I don't know if there  
16 will be any news media treatment of the case between now  
17 and when we see you. If there is anything about the  
18 case, avoid it. Anything about the case on the  
19 television, refuse to watch it; newspaper, refuse to  
20 read it; radio, refuse to listen to it.

21 And the reason, Mrs. Beasley, for each of  
22 those restrictions is to attempt to accomplish the same  
23 common goal or objective; and that's this: If you do  
24 become a juror in the case, the decision that you reach,  
25 whatever it is, must be based exclusively on the

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1 information you get when you're in the courtroom. You  
2 cannot, at any phase; let anything outside the courtroom  
3 affect you. If anybody needs to know or wants to know  
4 where you have been, we will take care of it. Do you  
5 have any questions of me?

6 A. No, sir.

7 Q. Thank you very much.

8 CECILIA FINE,  
9 having been first duly sworn, testified as follows:

10 VOIR DIRE EXAMINATION

11 BY THE COURT:

12 Q. Just have a seat make yourself comfortable,  
13 please. We all recognize it's been a long day for you.  
14 And the only thing we can say is we haven't been wasting  
15 our time, either. Miss Fine, before we begin, I'd ask  
16 you to remember back to yesterday the things we talked  
17 about with the whole group. Add to it this morning the  
18 things we talked about when eight of you were here this  
19 morning. Out of everything that we have talked about so  
20 far, do you have any questions for me?

21 A. No.

22 Q. Is there anything to this point that we have  
23 not yet touched on that you think we ought to talk about  
24 because it might have some bearing on your ability to be  
25 a juror in this case?

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1 A. No.

2 Q. Anything at all that you could think of  
3 presently, maybe something is to do with your personal  
4 life, might be something to do with your professional  
5 life, might be something to do with your health, might  
6 be something to do with something entirely different,  
7 that in any way would cause you to believe you could not  
8 serve as a juror in this case during the time frame  
9 we've discussed?

10 A. No.

11 Q. Miss Fine, this phase of the trial is meant to  
12 accomplish two things. One is to attempt to give the  
13 prospective jurors a bit of an overview as to what rules  
14 can come into play during the course of a trial like  
15 this. Because we're going to want to know, if you are a  
16 juror in this case, can you follow these rules? From  
17 what we've talked about so far, anything I've mentioned  
18 that what you find objectionable and feel, as a juror,  
19 you could not follow or enforce?

20 A. No.

21 Q. So, we have no problems with the rules. Second  
22 aspect of this process, I think, has to do with the  
23 ability you have to satisfy yourself, the lawyers need  
24 to be satisfied, that if you became a juror in the case,  
25 you're equipped to sit back, listen to all the evidence,

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1 evaluate it however you see it, and come up with what  
2 you think is the right result to reach based upon your  
3 evaluation of the evidence that they present to you.  
4 Does that sound like you?

5 A. Yes.

6 Q. I mean by that, your job is not to try and  
7 satisfy one side or the other or please them. Your job  
8 is certainly not to please me. Your job is to be  
9 satisfied with yourself five years from now when you  
10 wake up in the morning, you say to yourself, What I did  
11 five years ago was absolutely the right thing, whatever  
12 the result.

13 I want to spend just a second talking to  
14 you about this kind of a case generally speaking.  
15 Because sometimes we see that folks come down for jury  
16 service, and the thing kind of snowballs a little bit  
17 from this standpoint: Let's say hypothetically that  
18 you're a juror in a case wherein a defendant has been  
19 found guilty of capital murder, obviously an awful  
20 murder. Don't know what the testimony is, but we'll say  
21 that's the result.

22 You know, you come back, you hear the  
23 second phase of the trial, the testimony about the  
24 defendant, himself. You heard about the crime. Now  
25 you're going to hear about the defendant. Whatever that

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1 testimony was, let's just say that it rises to the level  
2 that proved to you beyond a reasonable doubt the answer  
3 to this first question that we talked about today, about  
4 being a future danger, you believe that answer should be  
5 yes. So, what we've done now is we have found somebody  
6 guilty of capital murder. We have found that they're a  
7 future danger to society. But can you see that the  
8 whole thing is not over yet, because there is still that  
9 next question to answer.

10 And there may very well be in a case  
11 evidence of a mitigating circumstance, a sufficient  
12 reason that makes you believe that while you did find  
13 the defendant guilty of capital murder, while you also  
14 found they were a future threat, there may also be  
15 evidence that satisfies you that a life sentence still  
16 would be a more appropriate verdict because of  
17 circumstances of the case, whatever they might be, or  
18 the circumstances of the defendant, whatever they might  
19 be.

20 So, I guess what I'm asking you to keep in  
21 mind is each question that you're asked to answer, being  
22 the first phase of the trial, when you're to decide is  
23 he guilty or not guilty, that being if you find him  
24 guilty of capital murder, first question. At the second  
25 phase of the trial, if you answer that question yes, the

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1 third question -- the second question at the second  
2 phase of trial. Those three verdicts are all  
3 independent of each other. And just because you return  
4 a finding of guilt of capital murder, in and of itself,  
5 has nothing to do with how you think that first question  
6 should be answered.

7 Now maybe you think it should be answered  
8 yes; but then maybe, again, you might think it should be  
9 answered no. So, everything starts all over again.  
10 When you get to one question, you start off at ground  
11 zero. Assemble all the evidence. Talk about it,  
12 because you're going to go use the same body of  
13 information as that being the evidence in the case; but  
14 you're going to be asked different things about that  
15 same body of information. So how one question is  
16 answered can't possibly dictate how the next question is  
17 answered, in and of itself. Am I making any sense at  
18 all?

19 A. Yes.

20 Q. You're very kind, because I couldn't have  
21 sorted that out and I heard me talk about it. Before we  
22 begin, do you have any questions of me?

23 A. No.

24 Q. We're going to let the smart guys talk to you.

25 THE COURT: Go ahead.

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1 cases where you think the death penalty ought to be  
2 available. Does any type of cases come to mind?

3 A. You mean a certain case?

4 Q. Or just a certain type of crime?

5 A. If the person has no regard for life at all and  
6 has shown that always.

7 Q. Shown that always. Do you mean, has been the  
8 consistent killer of people? Obviously, that would be  
9 an easy one if they were.

10 A. Yes.

11 Q. Is that something that you think would be  
12 required to show, that the person killed over and over  
13 again?

14 A. Just didn't care about human life in general.

15 Q. All right. Has there ever been a point in time  
16 in your life where you opposed the death penalty and  
17 thought it was not appropriate?

18 A. You mean, a certain case?

19 Q. Either that or just in general?

20 A. No.

21 Q. Okay. Some people say when they were young --  
22 I don't know that anybody could ever pinpoint when they  
23 made up their mind about the death penalty one way or  
24 the other. I don't know if that's an event in anyone's  
25 life?

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# VOIR DIRE EXAMINATION

2 BY MR. MCCLELLAN:

3 Q. My name is Lyn McClellan. Along with Claire  
4 Conners, I represent the State of Texas in this case. I  
5 want to go over your questionnaire and ask some  
6 questions about it and talk to you about certain aspects  
7 of the laws and we'll be through.

8 First of all, before you became a  
9 full-time housewife, you worked for Dr. Greensway?

10 A. Yes, sir.

11 Q. And what did you do for him?

12 A. I did the payroll.

13 Q. Okay. And E.S.L. Incorporated, what is that?

14 A. It's a subsidiary of T.R.W. Electronics firm.

15 Q. So it's not English as a second language?

16 A. Nope.

17 Q. Can you tell me in your own words, what is your  
18 opinion about the death penalty?

19 A. My own opinion, since I've never been asked  
20 that, in some cases I think it's -- it should be used  
21 if --

22 Q. Go ahead.

23 A. I was going to say if the person is harmful to  
24 society, then I think it should be used.

25 Q. What kind of cases come to mind if you think of

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1 A. I mean, the only time would be, hopefully for  
2 sure, that person was guilty and deserved to die. If  
3 they were wrong in saying that he wasn't guilty, yeah,  
4 that would -- hopefully, he's guilty.

5 Q. Right. Okay. Of course, you'll be able to be  
6 the one that makes that decision?

7 A. Right.

8 Q. Some people come to us and say they believe in  
9 the death penalty. They think it's a proper type of  
10 punishment for certain types of crimes. Ought to keep  
11 it available; ought to keep it on the books. But  
12 certain people go further and tell us they don't believe  
13 they, themselves, could ever participate in a process --  
14 in other words, be on a jury where they're called upon  
15 to make a decision or decisions, knowing that those  
16 decisions would result in this Judge ordering the  
17 execution of the defendant sitting over here on trial.  
18 Do you have any doubts about your ability to participate  
19 in this type process and make those type of decisions if  
20 that's what the law and the evidence called for?

21 A. I think I could.

22 Q. All right. You've never been on a jury before?

23 A. Never.

24 Q. Have you ever been called down before?

25 A. No.



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1 Q. First time out of the box, and here you are.  
2 Okay. And you're going to find most people that are  
3 going to be on the jury with you are going to be people  
4 who either, one, never had jury duty before, or this is  
5 definitely the first time many of them will ever sit on  
6 a jury to hear a case.

7 Did you, in the questions about the agree  
8 statements, agree/disagree, hedge like some people do on  
9 a lot of these? It says, The death penalty is  
10 absolutely justified. And you said, In some cases. And  
11 the death penalty is just and necessary. And you said,  
12 In some cases. Then the prison makes convicted people  
13 worse. And you said, In some cases.

14 A. Well, because I would have to know the  
15 circumstances.

16 Q. That's a good point, because this whole process  
17 revolves around having another circumstance.

18 A. Right.

19 Q. I don't think anybody, truthfully, knows. Some  
20 people will come and tell us they could -- truthfully  
21 couldn't tell us what they would do in finding whether a  
22 person is guilty or not guilty until they hear the  
23 facts.

24 A. Right.

25 Q. If I told them they had found someone guilty of

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1 background, criminal history or lack thereof, mental  
2 abilities or disabilities. And then you're asked to  
3 determine has the State proven to you beyond a  
4 reasonable doubt that there is a probability -- I  
5 suggest to you that that means more likely than not --  
6 that this person on trial would commit criminal acts of  
7 violence that will be a continuing threat to society?  
8 Doesn't say, would commit another murder or capital  
9 murder, although those are obviously criminal acts of  
10 violence. Could be a burglary, or a robbery, or hitting  
11 someone so hard with your fist you knock them out,  
12 anything that's criminal or violent in nature. Do you  
13 think you would be able to make that determination as to  
14 whether or not there is a probability that someone would  
15 commit criminal acts of violence that would constitute a  
16 continuing threat to society, based on the evidence that  
17 you heard, either yes or no?

18 A. Yes.

19 Q. Okay. If you answer that question yes, the  
20 defendant's going to receive the death penalty, unless  
21 on Issue Number Two you decide he's not.

22 Number two asks you and gives you a  
23 checklist of things. Says, now take into consideration  
24 all of the evidence, including the circumstances of the  
25 crime, the defendant's character and background, his

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1 capital murder, I don't think they could truthfully tell  
2 me what punishment they're going to give unless they  
3 knew what the facts were, and all the information about  
4 the defendant, and everything else, and the facts the  
5 law calls for. That's what you do. And if it doesn't  
6 call for it, don't do it. And some people criticize  
7 being an oversimplification, but that's basically what  
8 it boils down to. You're going to take an oath to a  
9 true verdict render based on the law and the evidence.  
10 If you do that, where you follow where the law and the  
11 evidence leads you, then you'll satisfy your oath as a  
12 juror. I need you to find a person not guilty, that's  
13 fine. I need you to find a person guilty, that's fine.  
14 You want to give death and give life, either one, that's  
15 what the law and the evidence calls for.

16 Issue Number One talks about future  
17 continuing threat to society. In other words, it's  
18 talking about a person -- you don't get to that issue  
19 unless you've already found someone guilty of capital  
20 murder, whatever the facts were in the case you heard  
21 before you make that decision. You then have those  
22 facts to look at.

23 And then at the punishment stage of the  
24 trial, before answering that question, you may hear  
25 additional evidence about a defendant's character and

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1 personal moral culpability. I'd like to refer to it as  
2 his personal responsibility in the commission of the  
3 crime, or the person who pulled the trigger that killed  
4 someone, or the getaway driver. That has to do with  
5 their responsibility.

6 And do you find there is sufficient  
7 mitigating circumstance or circumstances -- I'd like to  
8 refer to it as sufficient reasons why this person should  
9 receive life as opposed to death. It gives you the  
10 opportunity, after having heard everything and  
11 considering everything, to go back -- in fact, it  
12 demands you go back and look at the evidence, and can  
13 you find anything that's mitigating, gives me a reason  
14 to give a person life as opposed to death. And if you  
15 find evidence of that nature, then you weigh it in your  
16 mind to determine if it's sufficient to change your vote  
17 from death to life. And if you think that's the right  
18 thing to do, that's what you do. If you don't think  
19 it's the right thing to change your vote, then you  
20 don't. You leave it like it was. Any reason you  
21 couldn't follow that aspect of the law?

22 Now, keep in mind that before you get to  
23 Issue Number Two, you would have already found someone  
24 guilty. You would have already found they're a  
25 continuing threat to commit future acts of violence.



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1 And a lot of people may say, wait a second. If I found  
2 they're guilty and they're going to commit criminal acts  
3 of violence, at least to a probability, that's the kind  
4 of evidence the death penalty is made for, isn't it?  
5 And quite frankly, Issue Number Two commits you to going  
6 back to look to see, to make sure and see if there is  
7 anything there that ought to change that vote from death  
8 to life. And if it is, it gives you the opportunity to  
9 do it. And if not, you say, so be it. Any problem with  
10 that?

11 A. No.

12 Q. You have to be pretty much, you know, down the  
13 middle of the road; and you'll listen and take the  
14 evidence and make a decision. And that's kind of what  
15 we're looking for, people who can do that. Anything you  
16 can think of that you think would affect your ability to  
17 serve as a juror?

18 A. Huh-uh.

19 Q. Any reason -- so you'll know, the State of  
20 Texas is seeking the death penalty in this case. I'm  
21 going to ask -- try to convince jurors and ask them to  
22 find the defendant guilty of capital murder, try to  
23 convince the jurors that Issue Number One has been  
24 answered yes, and Issue Two no, such that the death  
25 penalty would be imposed. Is there anything I need to

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1 important purpose for punishment in a criminal case?  
2 The two that you picked was deterrence, and the third  
3 would be rehabilitation, or to reform the accused. I  
4 guess I'd like to ask you whether or not you feel that  
5 rehabilitation plays a role, potentially, for you in a  
6 capital murder case.

7 In other words, when you're talking about  
8 rehabilitation for an offender, do you think that that  
9 is something you would look at if you had found somebody  
10 guilty of capital murder and you're trying to evaluate  
11 whether or not this person should die by lethal  
12 injection or whether they should be sentenced to life in  
13 prison? Do you think rehabilitation is a factor that  
14 you would look at? In other words, do you think it's  
15 something that you will spend your time thinking about,  
16 or it's just not relevant at all.

17 A. I would think it would depend on the  
18 circumstances of the murder.

19 Q. Okay. What do you mean by that? Give me --

20 A. I mean, his background, how the murder took  
21 place.

22 Q. Do you think that -- and this is somewhat  
23 rhetorical -- but do you think that every murder case  
24 that occurs where a jury sits and listens to all of the  
25 evidence and where those juries find people guilty of a

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1 know or be concerned about your ability to render those  
2 type of decisions if that's what the law and the  
3 evidence called for you to do?

4 Thank you very much. I appreciate it.

5 THE COURT: Thank you, sir.

6 Mr. Hill.

7 VOIR DIRE EXAMINATION

8 BY MR. HILL:

9 Q. Hi, Miss Fine. I just want to talk with you a  
10 little bit about some of the answers that you gave --  
11 I'm sorry. I can't hear myself think. We've been doing  
12 this all day long. This is not something that we take  
13 lightly, but occasionally we kid with one another. I  
14 want to ask you a few questions from a defense  
15 perspective so I can satisfy myself, along with  
16 Mr. Wentz, that if we ask you to return back on the 29th  
17 of September so that we can visit and figure out exactly  
18 whether you're going to make the last twelve, that we've  
19 given you a fair opportunity to share some thoughts with  
20 us.

21 Okay. I looked at these questionnaires.  
22 I picked a few things that maybe I want to follow up on.  
23 One of things that I'm struck by is there is a question  
24 that asked you how you feel about the different  
25 purposes. Says, What do you believe is the most

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1 crime -- do you think they're all committed essentially  
2 the same way?

3 A. No.

4 Q. What type of factors or circumstances would be  
5 important for you to take into consideration? What are  
6 the type of circumstances that you think might help you  
7 to understand how a case should be decided, maybe some  
8 of the factors you'd wanted to know of?

9 A. I don't know if I understand. I don't know if  
10 I understand the question. I'm sorry.

11 Q. Okay. Some people have told us they would want  
12 to know whether or not the people that were involved had  
13 a relationship before, whether or not they were total  
14 strangers to each other, whether or not they were  
15 involved in any wrongdoing at the time the events took  
16 place that led to somebody committing a different crime.  
17 Would that factor be important for somebody like you?

18 A. Yeah. Anything that had to do with the crime  
19 would be important and why the person did what they did.

20 Q. If you looked -- and if it seems that we're  
21 spending an inordinate amount of time questioning you  
22 about the death penalty, this is our only opportunity to  
23 visit with you. There may be additional questioning in  
24 a couple of weeks, brief questioning on some topics; but  
25 this is essentially the only time we're going to be

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1 talking to you about the death penalty issue, so we  
2 necessarily have to address that.

3 A. Right.

4 Q. When you look at Question Number Two, obviously  
5 you've already found a person guilty of capital murder.  
6 You have already agreed with eleven other people that  
7 that person found guilty, in all likelihood, would be a  
8 continuing threat. So, now you have this question that  
9 is basically going to say he either gets life or death.  
10 A yes answer gives him life; the no answer, it stays  
11 with the death penalty. Clearly, once you find somebody  
12 guilty of capital murder, the very best that that person  
13 can do is serve life in prison, nothing else, unless you  
14 give him the death penalty.

15 A. Right.

16 Q. Look at this question, and it asks you to look  
17 at the circumstances of the offense, the defendant's  
18 character and background, and the personal moral  
19 culpability of the defendant. As I read that question,  
20 it basically gives you three broad areas of inquiry that  
21 you're looking at, okay? Can you tell me which of those  
22 three you would place the most emphasis on or whether  
23 you would feel like all three are equally important?

24 A. They're possibly all important.

25 Q. Okay. What time of -- all right. So, the

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1 Question Number Two, based on all that evidence, has  
2 already been answered for you?

3 A. No, no.

4 Q. So you would want to take a complete look at  
5 everything and make an evaluation independent of those  
6 first two questions?

7 A. Yes.

8 Q. One of the things that the Judge said to you --  
9 and I can only ask you to pay particular attention to  
10 it, and hopefully you will embrace this concept that he  
11 wants you to have a comfort zone. He wants you to be  
12 able to look back five years from now, whatever your  
13 decision is, whether it be to find the person not  
14 guilty, guilty, life, death, whatever issues you have to  
15 face in the case, and be comfortable knowing that you  
16 made the right decision.

17 I'll ask you this: Have you ever heard of  
18 cases where a jury of twelve people absolutely convinced  
19 beyond a reasonable doubt that a person committed a  
20 crime find out later on in life that maybe there was  
21 some evidence that didn't come out? Have you ever seen  
22 TV shows, like "48 Minutes," or "20/20," any of those  
23 shows that talk about cases like that?

24 A. I possibly have, but -- no, I guess, no, I  
25 haven't.

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1 circumstances of the offense -- that would be what we  
2 talked about before, you know, the full picture of what  
3 took place, who were the parties involved, how it  
4 evolved. Do you think there could be a case or cases  
5 where you are satisfied beyond a reasonable doubt that  
6 the crime was committed; yet, you still have some  
7 nagging concerns about everything that took place? In  
8 other words, not enough to rise to the level of  
9 reasonable doubt? You feel like the State's proven  
10 their case, but there is some real question in the back  
11 of your mind whether you're comfortable giving that  
12 person life or death.

13 A. No. I mean, if I had all -- I mean, if I  
14 believed all the evidence against him, no, I wouldn't  
15 have a problem, if that's what you're asking.

16 Q. Okay.

17 A. No.

18 Q. Let me ask you this: If you, personally, found  
19 somebody guilty beyond a reasonable doubt of capital  
20 murder, you didn't have a reasonable doubt at all as to  
21 what the person did and you found them guilty? --

22 A. Right.

23 Q. -- and if the evidence convinced you beyond a  
24 reasonable doubt that that person was going to be a  
25 continuing threat to society, do you believe that

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1 Q. What type of security clearance did you have  
2 when you were working at E.S.A.? What did that entail?

3 A. Top secret.

4 Q. Is that for on line trade secret type stuff or  
5 government use?

6 A. Government contracts, yea.

7 Q. I notice that you had a couple of years of  
8 college. Where was that at?

9 A. It was just a business college.

10 Q. Your husband is an engineer?

11 A. Yes.

12 Q. What were is the -- that company that he --

13 A. Cyboss (phonetically)?

14 Q. Yeah. What is that?

15 A. It's actually a French company. So, they work  
16 in the oil business, and it's a French company.

17 Q. You indicated when Mr. McClellan was  
18 questioning you on the issue of the death penalty, you  
19 felt that that was appropriate for somebody who had no  
20 regard for life. Am I correctly stating what your  
21 answer was?

22 A. Yes.

23 Q. Now, let me ask you -- this is kind of a  
24 convoluted question; but when I hear somebody saying  
25 that and I hear them say, I think the death penalty is

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1 appropriate for somebody who has no regard for life,  
2 that suggests to me if you felt the person did have a  
3 regard for life, that that might take the person out of  
4 the rim of the death penalty candidate.

5 In other words, that would be one factor.  
6 Not that that would be the only factor; but if you felt  
7 that a person had committed capital murder, clearly took  
8 the life of somebody without legal justification, do you  
9 feel that that person, that defendant, could still value  
10 life, could still have regard for life even though he  
11 had taken someone else's life?

12 A. Again, it would have to depend on the evidence;  
13 why he did that, if he just did it without knowing the  
14 person. It's hard to answer that if you don't know.

15 Q. Okay.

16 A. Does that make sense?

17 Q. It does. It's hard for us, too; because we're  
18 in a vacuum here. We're not allowed to tell you what we  
19 believe the facts to show, so we ask you these  
20 hypothetical questions that sometimes sounds like  
21 they're coming out of left field.

22 A. I'm sounding very ignorant, but it's hard to  
23 answer it if I don't know.

24 Q. Know what it is you're being asked to decide.  
25 How would somebody describe you? How would your

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1 neighbors describe you? I know there was a question  
2 there. Let me see what you put as your answer.

3 A. I think I put a kind person or good person.

4 Q. See, as Mr. Wentz and I sit here, and we're  
5 trying to decide, you know, whether you're the type of  
6 individual we would want to have sitting on this jury  
7 listening to the facts of this case, knowing that it's a  
8 capital murder allegation and knowing that it's this man  
9 sitting right here to my left that's the person that's  
10 accused of this crime, why -- or some reason why we  
11 should feel comfortable having you sit on the jury in  
12 kind of a self-evaluation, if you will?

13 A. Because I usually try to do what's right, I  
14 believe, between right and wrong.

15 Q. What about if Mr. McClellan was asking that  
16 same question to you?

17 A. I'd say the same.

18 Q. Be the same answer?

19 A. Same answer.

20 Q. Do you have any problem, or would it create any  
21 stress or conflict for you if you had to decide a case  
22 of this magnitude, and the issue that you were actually  
23 resolving had more to do with has the State proven its  
24 case beyond a reasonable doubt versus I really think  
25 this man is innocent? In other words, you have a case

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1 where you've heard a lot of evidence. You're not  
2 convinced of the pure innocence of the person, but you  
3 don't think the State has proven their case beyond a  
4 reasonable doubt. Would you be okay sitting on a jury  
5 and returning a not guilty verdict, knowing that the  
6 evidence didn't get you where the law required you to  
7 find guilt?

8 A. I hope I answer that the way I understand the  
9 question. I would do what I feel was right. If I  
10 didn't feel he was innocent, I would say he was guilty.  
11 I mean, if they gave me the evidence. Does that make  
12 sense? It has -- it would -- no matter what he said, I  
13 have to have the evidence, and I have to believe what I  
14 believe in. So, no, they wouldn't persuade me one way  
15 or the other, if that's what you're asking.

16 Q. Well, my question is this: If you felt that --  
17 if you did not feel that the person on trial was truly  
18 innocent -- that's a moral concept, really, when you get  
19 down to it -- you feel like the State has come very  
20 close to proving guilt beyond a reasonable doubt based  
21 on the Court's instructions, would you be able to return  
22 a not guilty verdict even though inside you say, gee, I  
23 don't even think this guy is totally innocent. State  
24 hasn't proven it. I have to return a not guilty  
25 verdict. Are you able to do that, or would the fact

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1 that you have lingering concerns that he may have been  
2 involved and it's just the State didn't prove it -- is  
3 that going to create a problem for you where you would  
4 have to --

5 A. No, I understand what you're saying. I said it  
6 the other way around, right?

7 Q. People don't always like the decisions they  
8 have to make; but we, as defense lawyers, always have to  
9 be prepared to question people and find out whether or  
10 not they are capable and can comfortably serve with  
11 eleven others when the going gets rough. You hear  
12 twenty witnesses, and they all have a little bit of  
13 something to say about a case. And you have all sorts  
14 of, well, I feel like maybe they came close; but bottom  
15 line is that I'm not convinced beyond a reasonable  
16 doubt. Are you comfortable with your ability to serve  
17 on a case like that? --

18 A. Yes.

19 Q. -- and return whatever verdict you think the  
20 law and the evidence took you to?

21 A. Yes.

22 Q. Okay. Thank you.

23 THE COURT: Miss Fine, in just a second  
24 I'm going to tell you your day has concluded with us.  
25 We're going to want you to back two weeks from tomorrow,

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1 September 29th. What we're doing is talking to folks  
2 individually for the purposes of creating a panel of  
3 about forty-eight people. Every single one of them will  
4 have been through exactly what you've been through.  
5 We'll have them back on Wednesday, the 29th. If we can  
6 start on time, which will be 9:30, we ought to be out of  
7 here by noon. On that day, everybody will leave here  
8 knowing whether they are or are not a juror in the case.

9

10 Now, between now and when we have you back  
11 in a couple of weeks, don't you alter your schedule one  
12 bit for us. Do your personal things just like you would  
13 ordinarily do them. You do business things, whatever it  
14 is. If you have a chance to leave town, take the chance  
15 to do it.

15

16 All that we ask of you between now and  
17 when we see you next is this: Please do not talk about  
18 this case with anyone. Do not permit anybody to talk to  
19 you about the details. I don't know if there is going  
20 to be any news media treatment regarding this case  
21 between now and when we get together next. But if there  
22 is anything in the media, avoid it; anything on the  
23 television, refuse to watch it; newspaper, refuse to  
24 read it; radio, refuse to listen to it.

24

25 And the reason, Miss Fine, for each of  
those is in an attempt to accomplish the same objective

1 THE STATE OF TEXAS )

2 COUNTY OF HARRIS )

3 I, Pamela Kay Knobloch, Official/Deputy  
4 Official Court Reporter in and for the 179th District  
5 Court of Harris County, State of Texas, do hereby certify  
6 that the above and foregoing contains a true and correct  
7 transcription of all portions of evidence and other  
8 proceedings requested in writing by counsel for the  
9 parties to be included in this volume of the Reporter's  
10 Record, in the above-styled and numbered cause, all of  
11 which occurred in open court or in chambers and were  
12 reported by me.

13 I further certify that this Reporter's Record  
14 of the proceedings truly and correctly reflects the  
15 exhibits, if any, admitted by the respective parties.

16 I further certify that the total cost for the  
17 preparation of this Reporter's Record is \$\_\_\_\_\_ and  
18 was paid by Harris County.

19 WITNESS MY OFFICIAL HAND this the \_\_\_\_ day of  
20 \_\_\_\_\_, 2000.

24

25

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27 Expiration date: 12/31/2000  
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33 APPELLANT: CHARLES MAMOU, JR.  
34 CAUSE NO. 800112

21

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23

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1 and that's this: If do you become a juror in the case,  
2 the decision that you reach, whatever that decision is,  
3 must be based exclusively upon the information received  
4 from within the courtroom and cannot in any way be  
5 affected or influenced outside the courtroom.

6

7 If you need anything for anybody to show  
8 them where you have been for what is now the three days  
9 you've been with us, that will take care that. This is  
10 a reminder note as to when and where we want you to be  
11 on the 29th of September, which is right outside this  
12 door, right where you were this morning, by 9:30.  
13 Before you leave, do you have any questions at all of  
14 me?

14

VENIREPERSON: No.

15

16 THE COURT: Thank you very much. Look  
17 forward to seeing you in a couple of weeks.

17

18

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## REPORTER'S RECORD

VOLUME 8 OF 25 VOLUMES

TRIAL COURT CAUSE NO. 800112

CHARLES MAMOU, JR. ) IN THE DISTRICT COURT

Appellant )

)

VS. ) HARRIS COUNTY, TEXAS

)

THE STATE OF TEXAS )

Appellee ) 179TH JUDICIAL DISTRICT

\*\*\*\*\*

## VOIR DIRE EXAMINATION

\*\*\*\*\*

On the 15th day of September, 1999, the following proceedings came on to be heard in the above-entitled and numbered cause before the Honorable Bob Burdette, Judge Presiding, held in Houston, Harris County, Texas:

Proceedings reported by computer aided transcription/stenograph machine.

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3

1 (Jury panel brought in.)  
 2 THE COURT: Good morning, ladies and  
 3 gentlemen. I want to spend some time visiting with you  
 4 about some things we did not talk about the other day  
 5 when your group was together. And the reason we didn't  
 6 talk about them, frankly, is because they were so  
 7 detailed; and we had so many people, we could have made  
 8 no progress. So we're going to spend some time this  
 9 morning before we start our individual conversations  
 10 talking about these things.

11 Before we begin, I'll remind you this is  
 12 the case of the State of Texas versus Charles Mamou.  
 13 Mr. Mamou is seated over here to next to his attorney,  
 14 Mr. Wayne Hill, Mr. Kurt Wentz. The State of Texas is  
 15 represented by two of her Assistant District Attorneys,  
 16 Mr. Lyn McClellan, who is present right now, and Miss  
 17 Claire Connors, who will be along in a couple of  
 18 minutes.

19 We talked the other day about the fact  
 20 this defendant stands charged by indictment with the  
 21 offense of capital murder that's alleged to have  
 22 occurred in Harris County, Texas, on or about the 7th  
 23 day of December, 1998. There is in the State of Texas  
 24 about twelve different types of conducts that if proved  
 25 beyond a reasonable doubt would warrant a jury finding

4

1 some defendant guilty of the offense of capital murder.  
 2 Suffice it to say, the common thread that runs through  
 3 all twelve of the types of conduct is this: There must  
 4 be an intentional murder, being the intentional taking  
 5 of the life of another human being without any legal  
 6 justification and without any legal excuse, meaning  
 7 self-defense is not murder, meaning accident is not  
 8 murder.

9 The way it becomes a capital murder is if  
 10 that murder, that intentional murder, is committed  
 11 during the course of another serious felony offense,  
 12 like is alleged in this case. One murder, it is  
 13 claimed, is committed during the course of the  
 14 commission of a kidnapping. If that's proved beyond a  
 15 reasonable doubt, that's a capital murder.

16 Another paragraph within the indictment  
 17 claims that there was a murder committed during the  
 18 course of another murder, that if proved would also  
 19 warrant a jury finding a defendant guilty of capital  
 20 murder. So that's what we're dealing with. That's the  
 21 allegation. Whether the allegation is accurate or not,  
 22 that's why we're having a trial.

23 Now, we talked the other day about the  
 24 fact that if a person is convicted of capital murder,  
 25 there are only two possible punishments. One of them is

5

1 life. One of them is death. We talked about the fact  
 2 that at the first phase of the trial, the jury's only  
 3 concern is going to be with whether the defendant is or  
 4 isn't guilty. If a defendant's not guilty, obviously  
 5 the case is over with; because we just don't sentence  
 6 people to the electric chair, or lethal injection, I  
 7 should say, for not being guilty. So if you're not  
 8 guilty, the case is over. If they were guilty, we come  
 9 back and there is a second phase of the trial.

10 And at the second phase of the trial,  
 11 additional evidence can be presented to you for the  
 12 purposes of showing what kind of a person you're dealing  
 13 with on trial. The first part of the trial you're going  
 14 to hear testimony about the crime that was committed.  
 15 Second part of the trial you're not going to hear  
 16 anymore testimony about that, because you've heard all  
 17 there is to hear.

18 Instead, at the second phase of the trial  
 19 you're going to hear testimony about the character, the  
 20 background, and perhaps the comparative involvement of  
 21 the defendant on trial with the commission of the crime,  
 22 if there are two or three or four other people involved  
 23 in the commission of the crime. The idea behind doing  
 24 that is just the same as decisions you make at home  
 25 when, for example, you're disciplining a child. You

6

1 tell a child not to do something. Child goes ahead and  
 2 does it. After you tell them one time, you might react  
 3 one way. The child does it ten or twelve or fourteen  
 4 times just as soon as you've told them not to, you might  
 5 react entirely differently.

6 So, we want you to see what the  
 7 defendant's like both from the standpoint of the  
 8 prosecution's potential evidence and both from the  
 9 standpoint of the defendant's potential evidence. You  
 10 can see all the good stuff, all the bad stuff, if there  
 11 is any, about the defendant at the second phase of the  
 12 trial. And you take all that information that you get;  
 13 that is to say, all the information at the second phase  
 14 of the trial about what kind of a person the defendant's  
 15 like. You pile information on top of all the  
 16 information you got at the first phase of the trial  
 17 about the crime or what kind of a case it was, and you  
 18 use every single bit of that evidence to help you answer  
 19 two special issues or two questions that are over here  
 20 on this easel. And we're going to spend some time  
 21 talking about it.

22 Before we start talking about them, let me  
 23 say this to you: We're going to spend much of today, or  
 24 at least I am during my conversation with you, talking  
 25 about the second, or the punishment phase of a trial.



7

Please don't read into that -- you say, why are you talking about the second phase when we haven't even heard any testimony about the first phase? And that's true. Please don't read into the fact that we're talking about the second phase of the trial before it ever begins, before the first phase ever begins, as being some indication that we aren't honoring the defendant's presumption of being innocent. That's not the case at all. We certainly are honoring it. Don't read into it the defendant is going to wind up pleading guilty. That's simply not going to happen. Don't wind up reading into it the defendant's defense attorneys, Mr. Hill and Wentz, are going to throw in the towel and virtually lay down. That's simply not going to happen. I can tell you that. But this is the only time we ever have a chance to talk to you, so we have to talk to you about the rules that can come into play from the beginning of the trial to the end of the trial.

For example, if we did not talk to you now about the punishment phase of the trial, if you, the jury, went out and heard the evidence in the first phase, you came back and you found the defendant guilty of capital murder, and if I sat you down, the twelve of you who were the jurors, and I said, okay, ladies and gentlemen, here are the rules that come into play at the

8

second phase of the trial, these questions, and so on, so forth. One of the jurors says, wait a second. I didn't know that was the deal. I don't agree with that rule at all; and I'm telling you right now, I simply won't follow it. That means I'd have to excuse that juror. That means I'd be left with eleven. I've got to have twelve. That means we'd have to have a mistrial. That means everything we will have done will have been a total waste of time, so that's why we talk about it now and for no devious reason whatsoever. It's just that simple.

Now we talked the other day about how -- one other thing. We're going to talk about some things with some degree of specificity. I know full well that what we're going to talk about today are things that you have never spent a second in your life ever thinking about, and there is no reason why you ever should have to. So what we're going to do is, I want you to know that while we're talking about it here today, don't feel that you have to memorize what we're talking about. You don't. The reason you don't have to memorize what we're talking about is because you'll have these rules in writing in the Court's charge. You'll have the Court's charge with you back in the jury room during the entirety of your deliberations. So, you can see it's

9

not necessary to memorize what we're talking about. So what I'm saying is, don't get frustrated because it's moving along quickly and things you've never heard of before are thought about. Please don't worry about that. I'm just trying to give you an idea of what can come into play. Whether it does come into play will depend upon the testimony in the case. So, some of these things we're going to talk about may not happen; but then again, they may. And I wanted you to be aware of it.

First off, we talked about the fact that how the jury answers these two Special Issues, these two questions at the second phase of the trial will dictate what punishment you must impose. If the jury answers yes to the first question and if the jury answers no to the second question, the law says that I have no choice, I have no option, I have no discretion. I must sentence the defendant to death, and that's what I'm going to do.

On the other hand, the law says that if the jury should answer those questions any way other than yes and no, in that order, again, I have no choice, no option, no discretion. I must sentence the defendant to life, and that's exactly what I'll do.

So, first off, you can see that in the State of Texas, a jury does not sentence somebody to

10

death. A jury does not sentence somebody to life. A jury simply takes the evidence that exists in the case and applies it to answering each of these two questions. You're entitled, however, to know what the result of your answers is going to cause. And a yes and a no is a death. Anything else is a life. Any questions so far?

We're going to talk in just a couple of minutes about these questions in detail. Before we do, go back to what I've told you about the Court's charge. You'll have it with you in the jury room. At the conclusion of all the testimony at the first phase of the trial, you'll have a different Court's charge that sets out the law for you that applies to the punishment phase of the trial, if you get to that phase of the trial, back in the jury room after the evidence has concluded at the second phase of the trial.

There are going to be lots of terms that are going to be defined for you. There are going to be lots of instructions and then the law set out that is raised by the testimony in the case. Some of these words that we're going to talk about that are contained within these two questions are going to be defined in the Court's charge; as some of them aren't. And if you ask yourselves, well, how do you guys decide at the courthouse what words you're going to define for us and

11

1 what words you're not, the answer to that question is  
2 very simply. If we're going to be using some term that  
3 is peculiar to the law, we have absolutely no reason to  
4 expect you to come down here from your jobs, not being  
5 lawyers, and be armed with information as to what those  
6 terms mean. That's ridiculous. So, those are the words  
7 we're going to define for you.

8

1 If, on the other hand, we're using words  
2 that we all use all the time anyway, we're not going to  
3 define those words. We're going to talk about some of  
4 each in these questions. The first question over here  
5 starts off with the phrase -- well, let me go through  
6 the whole question. Question asks, Do you find from the  
7 evidence beyond a reasonable doubt that there is a  
8 probability that the defendant would commit criminal  
9 acts of violence that would constitute a continuing  
10 threat to society? No matter what the case, no matter  
11 who the defendant, no matter anything else, there are  
12 only two possible answers to that question, either yes  
13 or no. Question starts off with the phrase, Do you find  
14 from the evidence beyond a reasonable doubt? If you  
15 will recall the other day, we talked about that term,  
16 reasonable doubt; and we talked about it from the  
17 standpoint that that's the amount of evidence that the  
18 State must present to a jury to satisfy them of the

12

1 defendant's guilt. If they present that evidence, the  
2 jury is satisfied it establishes beyond a reasonable  
3 doubt the defendant's guilt, the jury is obligated to  
4 find that defendant guilty.

5

1 If the State's evidence does not satisfy a  
2 jury beyond a reasonable doubt as to the defendant's  
3 guilt, then the jury's obligation is to find the  
4 defendant not guilty. That's why we have the  
5 presumption of being innocent. That's why we have the  
6 presumption of being not guilty at the time the trial  
7 begins, because there is no evidence on the table. And  
8 at the conclusion of the evidence, the jury's question  
9 to ask themselves is, what we have heard, do we have  
10 enough believable evidence in here that establishes in  
11 our mind beyond a reasonable doubt the defendant's  
12 guilt?

17

1 So, what we're saying is while starting  
2 off, every criminal case, the person on trial starts off  
3 being presumed to be innocent. Obviously, that  
4 presumption can be eliminated by the quality of the  
5 State's evidence. And if the quality of the State's  
6 evidence rises to the level of establishing a person's  
7 guilt beyond a reasonable doubt, obviously the  
8 presumption of being not guilty is erased; and, in fact,  
9 the defendant's guilty.

25

13

1 Now anytime we see the phrase, do you find  
2 from the evidence beyond a reasonable doubt, which is  
3 the way this first question starts out, also, that is a  
4 triggering mechanism that tells us that means the State  
5 has to show us what the answer should be. Their proof  
6 has to satisfy us beyond a reasonable doubt as to what  
7 the answer should be.

8

1 At the first phase of the trial, do you  
2 find the defendant guilty beyond a reasonable doubt?  
3 That means the jury has got to be satisfied that the  
4 State's evidence proves that the defendant is guilty  
5 beyond a reasonable doubt. Likewise, at the second  
6 phase of the trial the State's evidence has got to show  
7 to you beyond a reasonable doubt that the answer to that  
8 first question should be yes. So, what we're saying is  
9 this: At the time a defendant is convicted of the  
10 offense of capital murder, and as we go into the second  
11 phase of the trial, that part will be dealing with the  
12 background and the character of the defendant and so  
13 forth.

21

1 What we're saying is, there is a  
2 presumption that exists that all defendants convicted of  
3 capital murder should receive a life sentence. And that  
4 presumption exists up until the time comes, if it does,  
5 when the State's evidence proves to you beyond a

14

1 reasonable doubt that the answer to this first question  
2 should be yes. Because unless the State's evidence  
3 proves that the answer to that first question should be  
4 yes, the answer must be no, right? We already  
5 understand from our conversation this morning that it  
6 takes a yes and a no answer, in that order, for the  
7 death sentence to be imposed. So, a no answer to the  
8 first question is different than yes or no. So a no  
9 answer to the first question means a life sentence is  
10 imposed.

11

1 So, that's why starting off at the  
2 punishment phase of a capital murder case, it's presumed  
3 that the appropriate punishment would be life, unless  
4 the State's evidence proves beyond a reasonable doubt  
5 the answer to that first question should be yes.  
6 Anybody have any questions about that?

17

1 Okay. Let's take the first question. Do  
2 you find from the evidence beyond a reasonable doubt  
3 that there is a probability? The word probability is  
4 not going to be a word that's going to be defined for  
5 you in the charge. We use that all the time. My  
6 heavenly days with football season, we even use it more;  
7 because we're talking about odds on a football game.  
8 Who is going to win? Who is going to lose? Except when  
9 Baylor is playing, probably they're going to lose.

25

15

1 That's my school, so I can say it. Weather reports,  
2 twenty percent, forty percent, talking probabilities. I  
3 am not permitted to define for you the term probability,  
4 but I am permitted to, by comparison, tell you that  
5 whatever the word probability does mean to you, there  
6 are two things that it cannot be.

7

8 For example, probability, whatever it  
9 means to you, must mean something more than a  
10 possibility. Anything could possibly happen. Because  
11 it could possibly happen does not mean it's probably  
12 going to. Whatever the word probability means to you,  
13 it cannot mean something as much as a certainty; because  
14 something is probably going to occur does not mean that  
15 with a certainty it occurred.

16

17 And let's take this word, probability, and  
18 put it within the context of this question. It's the  
19 obligation of the State to prove beyond a reasonable  
20 doubt the existence of a probability that the defendant  
21 would commit future acts of criminal violence. Can you  
22 see how grossly unfair it would be to any defendant if  
23 the only requirement was that the State prove a  
24 possibility that the defendant on trial would commit  
25 future acts of criminal violence? Because that's  
always -- that's simply going to occur. There is always  
that possibility. Can you see, on the other hand, how

16

1 grossly unfair it would be to the State if we required  
2 the State to prove the existence of a certainty that the  
3 defendant on trial would commit future acts of criminal  
4 violence?

5

6 So, what we did was we split the baby. We  
7 use the word probability, something being perhaps more  
8 likely to happen than not happen. If that squares with  
9 your notion, that's a deal. If you have another idea of  
10 what it means, that's also just fine, as long as  
11 whatever a probability means to you, it means something  
12 more than a possibility, but not something as great as a  
13 certainty, somewhere in between. Any questions about  
14 that? That the defendant on trial would commit criminal  
15 acts of violence.

16

17 In order to obtain a yes answer to this  
18 question, it is not necessary that the State prove to  
19 you the existence of a probability that a defendant on  
20 trial would commit certain crimes in the future. They  
21 are required to prove to you the probability that a  
22 defendant would commit a certain class of crimes. That  
23 class of crimes being those that are crimes of violence.  
24 And a crime of violence can be violence as to persons or  
25 violence as to property. As you can see, that question  
makes no distinction. It just says crimes of violence.

25

So, what I'm saying is the State is not

17

1 required to prove to a probability that a defendant on  
2 trial would commit future capital murders. Certainly if  
3 that testimony exists, they're entitled to present it to  
4 you. But we're talking about a category of crimes,  
5 those being crimes of violence. Capital murder, certain  
6 crimes of violent murders, or attempted murders, or  
7 rapes, or robberies, or kidnappings, all are crimes of  
8 violence as to persons.

9

10 Crimes of violence as to property could be  
11 arsons, the burning of somebody's house, the burning of  
12 somebody's building, the burning of somebody's vehicle.  
13 Certain kinds of burglaries, the kind of burglary that  
14 requires a breaking in to get into property or onto  
15 premises, the taking of a brick bat, so to speak, and  
16 breaking in the windshield of an automobile. Criminal  
17 acts of violence all against property. That's the kind  
18 of stuff we're talking about. Can you see the  
19 distinction between those kinds of crimes and, for  
20 example, shoplifting, till tapping, reaching into a cash  
21 register, pulling out a ten dollar bill, walking out the  
22 store and leaving. Maybe those aren't. There is no  
23 violence involved.

24

25 Anyway, I'm just using that as an example  
for you to see the distinction between some types of  
crimes. And these criminal acts of violence that we're

18

1 talking about -- finish up with that first question --  
2 they must rise to the level that they constitute a  
3 continuing threat to society.

4

5 Now, let's talk for a second about the  
6 word society. That's another word that's not going to  
7 be defined for you. However, ask you to consider making  
8 a distinction, if you feel comfortable with the  
9 distinction between the words community and society. We  
10 all live in different communities, but we're all a piece  
11 of the same society. Now that can be important for this  
12 reason: Most of the time -- at least, we first started  
13 talking about the word society, who is in it. We think  
14 about the people with whom we have contact; family,  
15 neighbors, friends, coworkers, whatever it might be.

16

17 Ordinarily, we don't think, for example,  
18 of those people being involved in society who are behind  
19 the penitentiary wall; but they are also a piece of  
20 society. Because if they weren't, the lady who is the  
21 teacher, who goes into the school at 8:00 o'clock in the  
22 morning, punches her card to go up and teach whatever  
23 class she teaches. We know when she punches in, goes  
24 behind the walls of the penitentiary, she does not lose  
25 her right to be free from criminal acts of violence.  
And at the conclusion of her workday, if she escapes  
with her life and gets back outside the wall of the



19

penitentiary, she doesn't thereafter reacquire her right to be free from criminal acts of violence. That's preposterous. It's not the case. The point being those folks behind the walls of the penitentiary also have the right to be free from criminal acts of violence. And that means nurses, medical personnel, prison wardens, officials, administrators, guards, teachers, those kinds of people. And it also includes inmates, because they also have the right to be free from criminal acts of violence.

11

So, what we're simply saying is that society, as used in this context here, can mean all the people, all the time, everywhere. Because if it didn't mean that, then that question would read, Do these criminal acts constitute a continuing threat to the citizens of Harris County, Texas? And it doesn't say that. So, that's the first question. Any questions about the first question? Any?

19

Okay. If your jury answers that question no, the case is over; because there is no way you could answer that second question that's going to make the death sentence a possibility. A life sentence will be imposed. If, however, your jury answers yes to the first question, you move along to the second question. And before we take up the words contained within the

20

second question, I want to spend a couple of seconds talking to you about where a jury necessarily must be in the process before we get to that second question.

4

First off, necessarily, the jury would have had to have found a defendant guilty of capital murder; because if they didn't, we wouldn't have gotten to these questions. Secondly, a jury, necessarily, must have found that the answer to that first question is yes; that is to say, the defendant on trial is a future danger to society. But the case isn't over, because this third question -- I say third question. It's the second one in punishment, the first question meaning, is he guilty or not guilty?

14

This question asks you to review the evidence for the purposes of answering an entirely different question. Second question says, Do you find that, taking into consideration all of the evidence, including the circumstances of the offense -- now that's going to be what you heard at the first part of the trial -- also including the character and the background and the personal moral culpability or the personal moral responsibility -- that's going to be what you heard at the second part of the trial. So the first half of that second question simply instructs the jury to go back over all of the evidence in the case for the purposes of

21

asking yourself this one question: Is there a sufficient mitigating circumstance or perhaps circumstances that make you believe that a life sentence would be a more appropriate verdict than the death sentence?

6

Again, no matter who the defendant, no matter what the evidence, there is always going to be two answers to that question, two possible answers, yes or no. Now that second question, I think, is asking simply this: If in the face of all this bad stuff that you have found in this case has happened, is there any stuff that's in the case that rises to the level that makes you think, in spite of all that bad stuff, a life sentence would be more appropriate than a death sentence?

16

Now, maybe sometimes it would be there. Maybe sometimes it won't be there, because every case is simply different. Nobody is claiming that it's there, but the agreement must be made that you'll look for it. If it's there, react to it. If it's not there, then that's it. First thing that we see about that second question is this: Nowhere in that question do we see the phrase, Do you find from the evidence beyond a reasonable doubt? That phrase isn't in that question. So, this is going to be the first time that you're going

22

to be asked to answer that question, or answer a question, or make a decision where the State doesn't have to prove to you what the answer to that question should be. Because as we said, State's got to prove the phrase, Do you find from the evidence beyond a reasonable doubt? It's not there. Well, now that really tells us something significant. And what it tells us is this: Since the term "Do you find from the evidence beyond a reasonable doubt" is not contained within that first -- second question, I should say, that means the State doesn't have to prove to you what the answer to that question should be.

13

We know from our conversation the other day that a defendant on trial never has to prove anything, so the defendant doesn't have to prove to you what the answer to that question should be. Where does that leave us? Well, that leaves us with this: The law recognizes by telling us that the law recognizes that there are going to be many cases where there are no mitigating circumstances, because nobody's required to put them in the case. No one's required to present evidence of it. The only requirement is that the jury will go over the case to see if there are any in there.

24

So, what I'm saying is this: Well, let me finish with that question. When we talked about

25



23

1 mitigating, all we're talking about is, is there some  
2 unique feature in the evidence in a case that makes you  
3 think that what you ought to do is withdraw the death  
4 penalty and substitute in its place a life sentence? So  
5 when we talk about mitigating, we're not talking about  
6 forgiving. We're not talking about justifying. We're  
7 not talking about excusing. Because obviously, that's  
8 not going to happen; because the very least that's going  
9 to happen to them is he's going to get a life sentence.

10

11 Again, there may not be anything in the  
12 case that makes you think that case is worthy of a life  
13 sentence. But if there is, this is the only chance  
14 you'll have to pursue that option. Each of the three  
15 decisions that you make in the case, that being whether  
16 the defendant is guilty or not guilty, answer to that  
17 first question and to the second question, you're going  
18 to make that decision on the basis of the evidence that  
19 exists in the case. But can you see that each of the  
20 three questions that are involved -- Did he do it? Is  
21 he a future danger? Is there some reason why I think a  
22 life sentence would be more appropriate than the death  
23 sentence? While that decision is based upon all the  
24 evidence in the case, can you see that each of those  
25 questions is remarkably different from each other; and  
therefore, your answer to one of these questions has

24

1 absolutely no bearing on how you ought to answer the  
2 second question. Has no bearing on how you ought to  
3 answer the third question.

4

5 So, what we're saying is this: If you  
6 found somebody guilty of capital murder, and if you find  
7 based upon the evidence in the case that the answer to  
8 the first question should be yes, that has nothing to  
9 do, in and of itself, with how you ought to answer the  
10 third question. And I keep saying third question. I'm  
11 sorry. It's the mitigating question, because it's your  
12 third decision. Because there may be something in the  
13 case that you view to be unique to the degree that it is  
14 sufficient to cause you to withdraw the death sentence  
15 and replace it with a life sentence. Because keep in  
16 mind that when you get to this third question, your  
17 third decision, you will have made the other two  
18 decisions unanimously and consistently with requiring me  
19 to sentence the defendant to death, guilty of capital  
murder. Yes to the first question.

20

21 Now the second question asks you,  
22 basically, are you really satisfied based upon the  
23 testimony in the case that that is what you want to do?  
24 This is your chance to say, yes, it is. We've checked  
25 it all over. We reinforce our decision. We're  
satisfied that is what we want to do. Or, no, because

25

1 of some unique feature in the case, unique evidence, you  
2 don't know. All sorts of different kinds of things that  
3 could be mitigating. And what it might be to one of you  
4 might not be to another.

5

6 For example, sometimes some folks might  
7 tend to think that comparative youthfulness might be a  
8 mitigating circumstance in a case, the idea being some  
9 seven-year -- seventeen-year-old kid is not mature  
10 enough to make good judgement in decisions, and so  
11 forth. And that might be a feature that a juror might  
12 think was mitigating. Hearing exactly that same  
13 testimony, another juror might say, that's not  
14 mitigating. My Lord, anybody who is that mean that  
15 young, we've lost them. Same exact information, just  
evaluated differently.

16

17 Sometimes some folks might think that if  
18 in a case there's testimony of mental retardation, some  
19 folks might believe that to be mitigating. Others might  
20 not. The idea being, there is no way to fix  
21 retardation. It is what it's going to be. Another  
22 group of people on the same jury might say, whether it's  
23 mitigating, that's not really the only question. The  
24 question also is, is it sufficient? So if it's  
25 sufficient, wouldn't that depend on how severe the  
retardation is? Is it minimal, marginal? Is it

26

1 moderate? Is it severe? Now if it's severe, that  
2 might be mitigating. If it's moderate, that might not.  
3 The point being, that's your call. But you need to be  
4 satisfied that we're starting out with the notion that  
5 the only requirement that the second question poses --  
6 it is no requirement on the State or the defense to  
7 produce evidence. The only requirement is the jury to  
8 go back and reevaluate all the evidence in the case with  
9 an open mind, with the idea of, if you think there is  
10 anything in the case that is sufficient to cause you to  
11 think a life sentence is appropriate, then we want you  
12 to answer that question yes.

13

14 If after having gone back over the  
15 evidence in the case you're satisfied that the evidence  
16 is sufficient to make you think a life sentence would be  
17 more appropriate, then we want you to answer that  
18 question no. But a guilty of capital murder, and yes,  
19 you're a future danger, that doesn't close the case;  
20 because that third question still has to be dealt with.  
Anybody have any questions about the questions?

21

22 And the natural reaction would be -- I  
23 mean, if I came down here and sat in one of your chairs  
24 and somebody asked me that question, well, if you find  
25 somebody guilty of capital murder and you find they were  
a future danger, wouldn't you always answer that third

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question in such a way that the death penalty would be imposed because they're too scary to let out, I'd have to think about that for a second. But then I'd say to myself, wait just a second. What if, in a case, a week before the crime for which the defendant was standing trial was committed, what if the testimony was that the defendant, who I knew to be a Vietnam war veteran, Desert Storm veteran, was driving down the street in his car. There was a fire in the apartment building. He stops to run in, runs in to risk his own life, saves a couple of kids that would have otherwise surely perished in the fire. Then testimony is presented to me by some arson official that saw him at the scene. At any rate, because he got all screwed up in the service, he went off and committed this crime, I might say, maybe, maybe this conduct on that one day, this capital murder, was an absolute aberration as to that individual's life and all the other years of his life. Maybe that would be sufficient.

So, what I'm simply saying is, I'm not asking you to agree with my example. That's not the point of it. But the point of it is to expose you to the notion that just because you answer that guilty and yes to One has nothing to do with how you're supposed to answer Two, how you evaluate all the evidence in the

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case, whatever that evidence might be, and answer the question honestly based upon your evaluation of that evidence; because every case is simply remarkably different and all defendants are different. We all know that.

All testimony is different. We all know that. You can take the same testimony, exactly the same words, and going on the evidence of whoever the individual is, in your mind, that's the least trustworthy person in the world delivering that testimony. And then in another case, have exactly that same testimony delivered by whoever it is you think is the most trustworthy person. So the point being, who delivers the message. Is the message every bit as important as the messenger? Because you can have an accurate message; but if you don't believe the messenger, who cares what the message was?

Also, all jurors are different. The twelve folks that will be jurors in this case will be remarkably different from any other twelve jurors. What I'm saying is we could have four juries in this room at the same time, listening to the exact same testimony, from exactly the same people. I send you out to deliberate. We may very well get four different verdicts. You heard the same stuff. You heard it the

29

same time. That's why everything is different. That's why these questions are all independent of each other.

And how you answer one, for that reason, does not influence you how you answer the next. What influences you is the testimony in the case. Those are the questions, in a nutshell. Anybody have any questions about the questions? Okay.

We talked about the two punishments alleged, life and death. We know that death is not going to be difficult for you to figure out. Sometimes, however, we have some erroneous thoughts about what a life sentence is. I'm going to tell you in the charge and I'm going to tell you now that in the event in this case, if this defendant is found guilty of capital murder and if these questions are answered in such a way that the law requires the defendant to be sentenced to life in the penitentiary, a life sentence for this defendant in this case for the offense of capital murder means that he cannot be considered eligible for parole until he has actually served forty calendar years. That is, day for day, week for week, month for month, year for year.

Now, what happens at the conclusion of forty years? I don't know. But I do know that at the conclusion of forty years, the defendant thereafter

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becomes -- at that time becomes eligible for parole consideration. Eligibility for parole consideration has absolutely nothing to do with whether parole will or will not be granted. It is perfectly conceivable in one imaginary set of circumstances some defendant who was convicted at the age of twenty was sentenced to life in the penitentiary, and at the age of sixty becomes eligible for parole. Might live another twenty years, to the age of eighty, and spends every single second of it behind the bars of the penitentiary. That is a perfectly legitimately possibility.

On the other hand, you might have some other imaginary defendant who is twenty at the age of a conviction, sixty at the age of the forty years and might get paroled. Don't know what's going to happen in this case. We can't take into account what might happen in this case in the Year 2039, because that will be the fortieth year.

But what we do know is that whether parole will or will not be awarded is based upon evaluations made by prison authorities. That is to say, what was the person like during the forty-year stay they had with us? Those evaluations by the prison authorities will be forwarded to the Board of Pardons and Paroles, who will make recommendations to the Governor of the State

31.

1 of Texas as to what he or she should do. The Governor  
2 of the State of Texas, whoever he or she is going to be  
3 in the year 2039, may very well follow those  
4 recommendations and may very well refuse to follow them.  
5 We don't know. The point being, these questions deserve  
6 to be answered on the basis of the testimony involved in  
7 the instant case, not on the projection or speculation  
8 as to what might occur forty years from now.

9 And I'm telling you this rule. I'm  
10 telling you what it is. I'm also getting ready to tell  
11 you, but that can't be an issue now or a determining  
12 process to you in deciding how you should answer these  
13 questions. But I don't want you to be in the jury room  
14 and have somebody say to themselves, I know deep down  
15 that if I answer these questions in such a way that the  
16 Judge gives a life sentence, this defendant could be out  
17 of the penitentiary in five years. That's not possible.  
18 That's why I'm explaining this to you. We know it's  
19 going to be forty years. It could be a lot longer. Any  
20 questions about that?

21 Okay. We have spent time talking about  
22 capital murder, and we talked about the fact it's an  
23 intentional murder during the course of another major  
24 felony; kidnapping in one instance is claimed, another  
25 murder, another instance is also claimed. That means

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1 that the State is required to prove the existence of  
2 those two things beyond a reasonable doubt. Anytime the  
3 State's required to prove two things to you beyond a  
4 reasonable doubt, there are three possible outcomes that  
5 can occur.

6 Possible outcome number one: They do  
7 prove both of them beyond a reasonable doubt. If that's  
8 the case, your obligation is to find the defendant  
9 guilty of capital murder. Possible outcome number two:  
10 They can't prove beyond a reasonable doubt either of  
11 those two features. Cannot prove the intentional  
12 murder. Can't prove during the course of a kidnapping  
13 or during the course of another felony. If that were to  
14 be the case, your obligation would be to find the  
15 defendant not guilty of anything. Possible outcome  
16 number three: Maybe they can prove the existence beyond  
17 a reasonable doubt of the intentional murder, but cannot  
18 prove beyond a reasonable doubt that it occurred in a  
19 kidnapping or perhaps the second murder. Maybe a jury  
20 finds that that was done in self-defense, because we  
21 said murder is the intentional taking of a life of  
22 another human being without any legal justification or  
23 excuse. Self-defense is a legal justification.

24 So, if something like that were to  
25 happen -- and I'm certainly not claiming it is in this

33

1 case, because I don't know. But I do know it's a  
2 theoretical possibility. If that were to happen -- that  
3 is to say, the State can prove beyond a reasonable doubt  
4 the existence of a murder, but not be able to prove  
5 beyond a reasonable doubt the existence of the other  
6 felony, I would be required to give you a third option.  
7 That is to say, you would have the option of guilty of  
8 capital murder. You would have had the option of not  
9 guilty of anything. The third option, you find the  
10 defendant guilty of murder, not capital murder. Exactly  
11 the same crime. Intentional taking of the life of  
12 another human being without a legal justification or  
13 excuse, but that you find it wasn't done during the  
14 commission of an additional felony.

15 So, what we're talking about is a lesser  
16 crime, that being murder, out of a greater crime, that  
17 being capital murder. Just like taking a slice out of a  
18 pie. It's a lesser included offense based upon the  
19 evidence in the case.

20 We know the punishment for capital murder  
21 is life or death. The punishment range for murder is by  
22 confinement in the penitentiary for life, or by  
23 confinement in the penitentiary for a number of years,  
24 as long as that number is not less than five, not more  
25 than ninety-nine. And in addition to the confinement, a

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1 fine not to exceed \$10,000 may also be imposed.

2 Now, that's -- that range is so broad,  
3 it's almost incredible; but it's broad for a reason. We  
4 know there are all sorts of different circumstances, all  
5 sorts of different victims, all sorts of different  
6 defendants. We know that during a person's lifetime,  
7 some people are less valuable living than other people  
8 are valued at living, meaning the dope dealers who are  
9 killed may not be the same value to society as somebody  
10 else. We know that all people who commit crimes are  
11 different. For some people, their conduct in the past  
12 may have been exemplary; and for some reason they just  
13 went off the deep end and committed this crime. Other  
14 people, they may spend their whole life committing  
15 crimes and that's how they survive.

16 So, what I'm saying is that down here at  
17 the courthouse, we are not going to be presumptuous  
18 enough to ask you people who sit in those chairs to come  
19 down here and give of your time and then demand that  
20 every case is worth exactly the same punishment. That's  
21 why the range is broad enough, so you can take what you  
22 hear and plug it in along that line where you think it's  
23 appropriate.

24 So, for example, I know that when you  
25 think of murder, when people think of murder, there are



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1 certain things they think of. And ordinarily, they  
2 think of things we're conditioned to seeing on the  
3 media, because the media's job is not to be accurate.  
4 The media's job is to sell Tylenol, because they don't  
5 make a profit. Being accurate is not going to help.

6 So, my question -- I was going to say  
7 this: For example, you might have a  
8 seventy-five-year-old couple, been married for fifty  
9 years. The Mrs. gets sick. She's on a life support  
10 system. She is not going to survive. They talk about  
11 it. They pray over it. She asks him to pull the plug.  
12 He thinks about it for a couple of days, and one day he  
13 simply walks into that hospital room and pulls the plug  
14 and she dies. Without getting into the morality of this  
15 circumstance, in this state that's murder. That's the  
16 intentional taking of the life of another human being  
17 without legal justification and without legal excuse.

18 Now, certainly the crime wasn't done  
19 maliciously. It wasn't done out of hate. It wasn't  
20 done out of anger. It wasn't done out of revenge. It  
21 was done out of love. Maybe you would not think that  
22 would be murder. Because of the uniqueness of its  
23 circumstances, maybe it would be a murder that you were  
24 to give a life sentence. I don't know. Maybe you  
25 would. That would be your call. But if you thought it

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1 upon the evidence. I'm simply asking, is that an  
2 available sentence option to you if you think the  
3 circumstances deserve it? And I see no reason to think  
4 the contrary, that you wouldn't, so I assume.

5 I'm going to take that same question and  
6 flip it. Same kind of jury, capital murder jury. The  
7 jury unanimously finds the defendant not guilty of  
8 capital murder, but your jury unanimously finds the  
9 defendant guilty of murder. You come back and you hear  
10 the second phase of the trial about the defendant. You  
11 hear the evidence about that, whatever that evidence  
12 might be. Is there anybody here who, after having heard  
13 all of the testimony in that particular case, could not  
14 consider assessing that imaginary defendant's punishment  
15 at confinement in the penitentiary for five years if you  
16 find, based upon the uniqueness of the testimony in that  
17 case, that that was the right result to reach?

18 Again, not would you do it? But would  
19 that be a legitimate consideration for a sentencing  
20 option if you thought the circumstances of the case  
21 deserved it? The idea behind it is whatever result you  
22 reach in any case, whether it's capital murder, a  
23 murder, whatever it is, we want you to be open to  
24 reaching the result that the testimony takes you to,  
25 both the crime that was committed, as well as the person

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1 was worth something less than that, can you see why  
2 we've got to give the right to roam, so to speak?

3 So, let me ask each of you this question.  
4 Assume with me for just a second you're a juror in some  
5 imaginary capital murder case. Your jury hears all the  
6 evidence at the first phase of the trial. You go out  
7 and deliberate; and your jury unanimously determines  
8 that the defendant on trial, whoever he or she is, is  
9 not guilty of capital murder. But your jury does  
10 unanimously determine that the defendant on trial is, in  
11 fact, guilty of murder.

12 You come back and you hear the second  
13 phase of the trial. Whatever that testimony may have  
14 been doesn't make any difference, but let's just say  
15 this: Whatever that testimony was, you add it to the  
16 testimony about the crime. If you were a juror in that  
17 kind of a case, in that situation, is there anybody here  
18 who would refuse to consider sending -- assessing that  
19 particular defendant's punishment at confinement in the  
20 penitentiary for life? You thought, after having heard  
21 all of the evidence in the case, that that was the right  
22 result to reach? Anybody here who wouldn't consider  
23 that if you thought that was the right result?

24 Now, I'm not asking you to commit, would  
25 you do it? I obviously can't, because that would depend

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1 that committed it, as well as the victim in the case.  
2 And wherever, within that range of punishment, you think  
3 you ought to be because of the evidence, that's where we  
4 want you to go. What you do, that's your call. But the  
5 fact that you're available to all the possibilities,  
6 that's the only commitment we're trying to extract from  
7 you. And once you hear the evidence, then you obviously  
8 do exactly what you want do. Any questions about that?

9 Two other things real, real briefly. And  
10 the first thing I'm going to talk about -- I'm not going  
11 to talk about the legal steps, but I'm going to talk to  
12 you about a concept. We have a concept in our law that  
13 says that anytime a couple of people get together to  
14 conspire to commit a felony or commit a crime and that  
15 crime is committed, one of those conspirators cannot be  
16 convicted only on the testimony of another conspirator.  
17 That is to say, there must be some additional evidence  
18 other than evidence of the conspirator from some  
19 independent source that tends to connect the person on  
20 trial to the commission of the crime.

21 For example, another guy and I agree to  
22 rob a bank. I'm the wheel man. He's the robber. He  
23 goes in, robs the bank, comes back, jumps in the car,  
24 and off we go. The only person that gets seen during  
25 the robbery is that idiot, because I sent him in with a



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1 gun. I'm in the car. I'm okay. We get arrested. Can  
2 you see that if that bank robber, if he testifies  
3 against me, a conviction cannot be had against me if  
4 there is no other evidence in the case other than his.

5 Now the only other evidence, whatever it  
6 might be, if there is any evidence from some independent  
7 source -- that is, for example, the fingerprints on a  
8 bank note -- that tends to connect me to the commission  
9 of a crime, something that corroborates what the other  
10 defendant says. Is there anybody here who has any  
11 dispute with that facet of our law? I don't know if  
12 that's going to come into play in this case, but I do  
13 know that law applies to all cases. And all we say in  
14 the State of Texas is, sure, the person can be convicted  
15 upon the testimony of an accomplice, but there has got  
16 to be some corroborating feature to the testimony; and  
17 that corroborating feature has to be something in and of  
18 itself doesn't prove the defendant's guilt beyond a  
19 reasonable doubt, but the corroborating feature must be  
20 something that ties him to the commission. Anybody have  
21 any dispute or qualms with that facet of our law?

22 One last thing. We got two kinds of  
23 evidence that exist in the trial of a case, in this  
24 town, in this case, in this country. Those two kinds of  
25 evidence are direct testimony and circumstantial

40

1 testimony, direct evidence and circumstantial evidence.  
2 I want to bring this up, because sometimes we hear  
3 people say, I could not ever convict anybody on  
4 circumstantial evidence. And they have no idea what  
5 you're talking about. The law doesn't care what kind of  
6 testimony -- what kind of evidence there is in the case.  
7 The law doesn't care if in one case it's all direct.  
8 The law doesn't care if in another case it's all  
9 circumstantial. And in the third case the law doesn't  
10 care if it's some direct and some circumstantial. The  
11 law just simply doesn't care about that.

12 The law does care that whatever the  
13 evidence is, the quality of that evidence must, to the  
14 jury, rise to such a level that it proves the  
15 defendant's guilt beyond a reasonable doubt. Just like  
16 the law doesn't care how many witnesses there are in a  
17 case. Law only cares, do you find those witnesses'  
18 testimony to be credible? And does that credible  
19 testimony establish a person's guilt beyond a reasonable  
20 doubt? Whether it comes from two witnesses or  
21 twenty-seven witnesses doesn't make any difference.

22 So, back to the direct and circumstantial  
23 evidence business. For example, we all know, because  
24 we're conditioned by television -- I am, too -- that the  
25 most credible identifying feature about an individual is

41

1 a fingerprint; because even Jack Webb taught you in  
2 "Dragnet" that no two people have a fingerprint alike on  
3 the face of the world.

4 Now we've gotten into DNA, and that's even  
5 more sophisticated; but you see, a fingerprint is  
6 circumstantial evidence. And it's circumstantial,  
7 because we know that the individual left a fingerprint;  
8 but we don't know when the individual left the  
9 fingerprint, and we don't know where the object was when  
10 the fingerprint was left. Now if the object is  
11 immovable, we can pretty well figure where he is; but  
12 if it's a gun and my fingerprints are on a gun doesn't  
13 mean I committed the crime, because we don't know why he  
14 touched the gun and we don't know where the gun was.

15 So when we talk about direct evidence,  
16 we're talking about somebody who saw something; I mean,  
17 actually point-blank saw it, or a confession by a  
18 defendant admitting he or she committed it.  
19 Circumstantial evidence means simply testimony of  
20 independent circumstances that, when taken together with  
21 other circumstances, can show that somebody committed a  
22 crime. It's the quality of the evidence in the case,  
23 not whether it's direct or circumstantial.

24 For example, we can have it down here near  
25 where they're building the ballpark down here, Enron

42

1 Field. So you might have somebody who is just out there  
2 in that area and who absolutely gets shot with a  
3 handgun, killed, and he dies. You might have three  
4 absolute drunks who were here testifying and who were on  
5 the verge of passing out just before the crime was  
6 committed. They tell you that, I was drunk as a skunk,  
7 but this is what I saw. Can you see how a jury may have  
8 difficulty believing beyond a reasonable doubt the  
9 reliability of that testimony even though it was direct  
10 testimony, direct evidence they saw, according to them?

11 On the other hand, we might have three  
12 people, one of whom saw a defendant with a handgun in  
13 his hand down there. Ten seconds later, another  
14 defendant, or another witness sees a victim fall to the  
15 ground after having heard a gunshot. A third witness  
16 sees, ten seconds after the gunshot is fired, the  
17 defendant with a gun in his hand. And when the  
18 defendant is arrested and the gun is taken as evidence,  
19 ballistically, it is determined that the bullet in the  
20 dead man's body that caused his death was, in fact,  
21 fired from that gun. Not a single soul saw the  
22 defendant fire the gun. But can you see under those  
23 circumstances, that circumstantial evidence might very  
24 well be more reliable and trustworthy to a jury?

25 The point being, whether it is or is not

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1 direct or is or is not circumstantial is not the point.  
 2 The point is whether you believe it beyond a reasonable  
 3 doubt. My question to you is this: If, in a case, a  
 4 capital murder case, there were testimony and that the  
 5 only testimony in the case was circumstantial but you  
 6 believed that circumstantial evidence beyond a  
 7 reasonable doubt, whatever it might have been, it grows  
 8 to the level you believe it beyond a reasonable doubt,  
 9 is there anybody here who would refuse to find that  
 10 imaginary defendant guilty of capital murder simply and  
 11 only because the testimony was circumstantial and not  
 12 direct? Again, assume you believed it beyond a  
 13 reasonable doubt. And I gather that you will.

14

Okay. Anybody have any questions for me?

15

You've just finished your first year in law school. Let  
 16 me tell you what I think this is about, and this is just  
 17 my notion. What I think we're embarking upon is  
 18 something that's meant to accomplish two primary  
 19 purposes. Primary purpose number one is to give you an  
 20 overview to what kind of rules can come into play during  
 21 the course of a trial like this. Now it may be some of  
 22 these that we've talked about. I don't know. Maybe  
 23 they all will. I don't know. But I want you to be  
 24 aware of them; but the ultimate question is going to be,  
 25 too, if you were a juror in the case, is there anything

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1 that you have heard so far in terms of these rules that  
 2 you object to so much that if you were a juror, you  
 3 would refuse to follow it?

4

Thing number two: I think this process is  
 5 meant to accomplish for you to be satisfied with  
 6 yourself, certainly for the lawyers to be satisfied,  
 7 that if you were a juror in this case, starting out, you  
 8 have no preconceived idea in the world about what result  
 9 you'll reach, that you're going to listen to the  
 10 information they're going to give to you, and you're  
 11 going to take their information and evaluate it  
 12 yourself. And based on that, you're going to come up  
 13 with what you think is the right result to reach. And  
 14 if it's guilty of capital murder, if it's not guilty of  
 15 capital murder, if it's guilty of murder, if that comes  
 16 into play, your job isn't to make the prosecution happy.  
 17 Your job isn't to make the defense happy, and your job  
 18 certainly, certainly isn't to make me happy. Your job  
 19 is to be satisfied with yourself five years from now, or  
 20 whenever it is, as you look back and say to yourself, I  
 21 don't remember the names of any of those human beings  
 22 that were involved in that trial down there at that  
 23 courthouse, but I do know that I'm still satisfied what  
 24 I did do was the right thing to do based upon the  
 25 information that I was given during the course of that

45

1 trial and take that information and apply to it the law  
 2 of the case. Is there anybody here who feels as though  
 3 they can't do that anyway?

4

Okay. If you would, please retire to the  
 5 hallway. We're going to call you in individually, get  
 6 you out of here just as quickly as we possibly can.  
 7 Thank you very much.

8

VERA SALDANA GARCIA,

9

having been first duly sworn, testified as follows:

10

VOIR DIRE EXAMINATION

11

BY THE COURT:

12

Q. How are you today? Please have a seat and make  
 13 yourself comfortable. Miss Garcia, first off I'd like  
 14 for you to think back in your mind to the other day, the  
 15 thing we talked about, add to it this morning the things  
 16 we've talked about. Out of everything that we have  
 17 talked about so far, do you have any questions at all  
 18 for me?

19

A. One question about -- you put a scenario where  
 20 there was an older couple that the wife was ill, the  
 21 husband pulls the plug. I didn't understand what you  
 22 said after that, whether there was any way -- were you  
 23 saying there was any way that the juror would not find  
 24 that person to where they would be eligible to go for  
 25 more than five years in prison?

46

1 Q. What I said was, that conduct in this state is  
 2 murder.

3

A. Okay.

4

Q. It is the intentional taking of the life of  
 5 another human being without any legal justification or  
 6 without any legal excuse.

7

A. Okay.

8

Q. Now, I also said, but can you see that that  
 9 particular offense was not committed maliciously?  
 10 Certainly no hate. Certainly no revenge. It was  
 11 actually committed out of love. Can you see? Just an  
 12 example. But when people think of murder cases, they  
 13 just think of something horrible like they see on  
 14 television; and there are others. And I just threw that  
 15 out, and maybe that would be the kind of a case that you  
 16 might not think that seventy-five-year-old gentleman,  
 17 who had never done anything wrong in his whole life,  
 18 ought to be sent to the penitentiary for the rest of his  
 19 life. That was the only point of that, just to see that  
 20 things are different. Not, what would you do? Because  
 21 that doesn't come into play at all. It was meant to be  
 22 a vehicle so that you could see all sorts of different  
 23 kinds of circumstances, and that's why the range of  
 24 punishment for murder is so wide.

25

The range of punishment for capital murder

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1 is not wide at all. It's life or death, right?

2 A. Right.

3 Q. Okay. Any other questions?

4 A. No.

5 Q. Anything that we have not yet talked about that  
6 you think we should talk about because it might have  
7 some bearing on your service as a juror?

8 A. No, sir.

9 Q. Anything at all, Miss Garcia, whether it be  
10 something perhaps about your personal life, perhaps  
11 something about your professional life, perhaps  
12 something about your health, or perhaps something about  
13 something else that you feel in any way would interfere  
14 with your ability to be a juror in this case during the  
15 time frame we've talked about?

16 A. Well, I do have -- it's just my personal  
17 life -- about the death penalty. I'm kind of with my  
18 religious beliefs, but I do also believe that there has  
19 to be justice and there has to be law.

20 Q. And can you -- is what you're saying to me,  
21 Miss Garcia, that while you may have intellectual and  
22 religious reservations about the imposition of the death  
23 penalty, that you recognize there are just simply some  
24 sets of circumstances where you think that you would  
25 have to put those thoughts aside; and if those

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1 circumstances do exist, you could and would vote in such  
2 a way the death penalty was imposed?

3 A. Yes.

4 Q. Not that it would be something you would want  
5 to do, and I understand that. But you do recognize  
6 there is -- some of those situations just simply exist?

7 A. Right.

8 Q. Before we begin, do you have any questions at  
9 all for me?

10 A. No, sir.

11 Q. Can you see on all these questions -- all these  
12 decisions, I should say, that the jury has to make are  
13 all independent of the other decisions that you make?

14 A. Yes.

15 Q. That just because you make one for one reason,  
16 that doesn't mean necessarily that you'll make the same  
17 decision as to the next question; because the next  
18 question -- any questions about that?

19 A. No.

20 Q. Thank you.

21 THE COURT: Mr. McClellan?

22 MR. MCCLELLAN: Thank you, Your Honor.

23 VOIR DIRE EXAMINATION

24 BY MR. MCCLELLAN:

25 Q. Miss Garcia, my name is Lyn McClellan. Along

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1 with Claire Conners, we represent the State of Texas in  
2 this case. I want you to sit back and relax. We're  
3 going to ask you some questions about your answers in  
4 the questionnaire, try to get a better feel for what  
5 your thoughts and opinions are about a case like this.  
6 And we'll start out first of all and just ask you, what  
7 are your feelings about the death penalty? Put it in  
8 your own words.

9 A. The death penalty is something that I -- that  
10 we see more and more, and it's because of the violent  
11 crimes that are being committed to our society. And so,  
12 there has got to be some kind of justice, maybe just so  
13 other people can either be educated that's not right,  
14 that there is punishments for those that deserve to be  
15 punished.

16 Q. Now you mentioned to the Judge about religious  
17 beliefs, and I see on the questionnaire where you're  
18 Catholic. I'm a member of the Catholic church myself,  
19 even though I'm not Catholic. My wife is, and I know  
20 the Catholic church opposes the death penalty. And the  
21 last few weeks we had a homily where the priest talks  
22 about the church's stance against the death penalty as  
23 punishment for crimes. How does that work into -- I  
24 know you're very religious and go to church every week  
25 and take your religion seriously. And how would that

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1 affect, if it would, your service as a juror in a case?

2 A. I believe that I would base it on the  
3 circumstances, based on the evidence, based on what was  
4 presented without a reasonable doubt. I would have to  
5 do my duty as a citizen.

6 Q. Okay. All right. And I often wonder, not only  
7 with Catholics, but with other people who have their  
8 religion, or their pastor, or their priest, or whoever,  
9 may be in a position to where they, personally, oppose  
10 the death penalty; and that's who's leading the church.  
11 And I always wonder if a person was on a jury and they  
12 happen to go to church on Sunday during the jury service  
13 period and the priest or the pastor or whoever the  
14 leader in the church was to preach about the fact that  
15 the death penalty is wrong and it's a sin, et cetera,  
16 for us to participate in that, how that would affect a  
17 person who was serving on a jury? Do you think that  
18 would ever have any effect on you?

19 A. I think, also, again, based on if I -- I served  
20 as a citizen, I would need to do my -- what I think my  
21 conscience was after all the evidence was presented.

22 Q. Do you think that would control over your  
23 religious beliefs in relation to this particular type of  
24 case?

25 A. I would have to say yes.



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1 Q. Okay. All right. Because you know that the  
2 State of Texas is seeking the death penalty in this  
3 case. We're going to be asking jurors to answer the  
4 question that the defendant is guilty of capital murder.  
5 Hope to prove that beyond a reasonable doubt and ask the  
6 jurors to return a verdict of guilty. We're going to  
7 ask the jurors, in presenting evidence, to answer those  
8 questions in such a way that death would result. And  
9 so, we will be seeking the death penalty. There is no  
10 doubt about that. Do you have any doubts about your  
11 ability to participate in a process whereby you would be  
12 called upon to make decisions that you knew would result  
13 in this Judge ordering the execution of the defendant  
14 sitting over here on trial if that's what the law and  
15 the evidence called for?

16 A. I wouldn't have any problem with that.

17 Q. You had been on a robbery jury before, I  
18 believe, in your questionnaire. Can you tell us  
19 something about that? Was that here in Harris County,  
20 I assume?

21 A. Yeah. It's been such a long time, but it was  
22 where a person was involved in a robbery with another  
23 person in a convenience store.

24 Q. Was there a gun involved, or do you remember?  
25 Did somebody go in and hold up a clerk?

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1 A. Yes, it was a gun involved.

2 Q. And y'all reached a verdict -- you need the  
3 questionnaire? Y'all reached a verdict, and you  
4 assessed the punishment; is that correct?

5 A. Yes.

6 Q. Did the defendant in that case testify, if you  
7 recall?

8 A. No.

9 Q. And what punishment did y'all assess, if you  
10 recall?

11 A. It was probation, like ten years of probation  
12 and community service, I think.

13 Q. How old was the defendant? Do you know?

14 A. About mid thirties.

15 Q. Do you recall what court that was in?

16 A. No, sir, I don't.

17 Q. Can you tell me what, in your -- the jurors'  
18 minds and your minds -- when you thought that probation  
19 was the prudent punishment as opposed to penitentiary  
20 time, what factors entered into that decision?

21 A. I think there was a mention of the suspect  
22 having family, having children; and he didn't have a job  
23 at the time, and that kind of thing. And behind the  
24 decision was, among the jurors, that maybe he would be  
25 better served being outside and working towards

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1 providing for his family instead of incarcerated.

2 Q. Did you -- did this person -- was that the  
3 first time this person had ever been in trouble with the  
4 law?

5 A. Well, we weren't told until afterwards that  
6 this person had been involved in some other kind of  
7 crime.

8 Q. Okay. And did that make you --

9 A. It sort of made me feel like if we would have  
10 known some of their history, that maybe the punishment  
11 would have been different.

12 Q. Okay. All right. What kinds of -- had he been  
13 in the same type of problems before?

14 A. I think he was involved in some kind of car  
15 theft.

16 Q. Okay. All right. You say in your  
17 questionnaire that you saw the movie, "Dead Man  
18 Walking," I guess?

19 A. Uh-huh.

20 Q. What did that -- or what were your thoughts  
21 about that movie?

22 A. Well, it was sad; but then it was -- the crime  
23 in that movie was horrendous. It was something that no  
24 one should -- it was just very violent, and there was no  
25 reason for any kind of crime like that. Innocent

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1 people --

2 Q. I forget what the crime was that was involved.  
3 Do you remember what --

4 A. It was a young couple. I think they were  
5 both -- they were -- the woman was sexually assaulted  
6 and murdered; and both of them were murdered execution  
7 style, that kind of thing.

8 Q. Would that be kind of a crime -- seeing that  
9 movie, is that the kind of situation you think the death  
10 penalty may be appropriate for that type of a case?

11 A. Yes.

12 Q. Do you think everybody can be rehabilitated?

13 A. Not everybody, no; but given the chance, some  
14 people might take the opportunity to be rehabilitated.

15 Q. You think rehabilitation might be easy for  
16 someone who has not committed a violent crime? You  
17 know, somebody that robs a store and doesn't hurt  
18 anybody, or somebody that burglarizes a house and  
19 doesn't confront anybody, as opposed to a situation  
20 where maybe somebody commits the offense of murder or  
21 more?

22 A. I think someone that commits any kind of crime,  
23 or crimes that are, I guess, serious, like robbery or  
24 something like that can be rehabilitated. I think just  
25 really anyone, but it all depends on their history. I



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1 mean --

2 Q. Do you think rehabilitation depends more on the  
3 person, or does it depend upon the type of program  
4 that's being used to try to rehabilitate?

5 A. On a person, definitely.

6 Q. In the questionnaire it has these five  
7 different options here. One statement that best  
8 summarizes your general views about the death penalty.  
9 And you chose the one that says, I'm opposed to the  
10 death penalty except in a few cases where it might be  
11 appropriate. What kinds of cases come to your mind?  
12 What kind of cases come to your mind when you think the  
13 cases -- think of cases where it might be appropriate?

14 A. Well, I think when I filled out the  
15 questionnaire, I wasn't too clear on what capital murder  
16 was --

17 Q. Okay.

18 A. -- what the difference -- you know, different  
19 violent crimes; but I think I would still say that my  
20 answer would be just that. But as far as crimes that  
21 are committed that are just -- that are awful and a  
22 person has no remorse, I would say -- and then there was  
23 the evidence that was -- all the evidence was there, and  
24 then I would say I do believe in capital punishment in  
25 the death penalty.

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1 Q. You indicated about what things you think are  
2 important in deciding whether a person should be  
3 sentenced to death or life imprisonment, and you  
4 indicated premeditated crime or hate crimes. So, I  
5 assume then you can think of a case where it's thought  
6 out ahead, taking someone's life, as opposed to  
7 something that might happen the spur of the moment? Do  
8 you think there is a difference between that or not?

9 A. I think that sort of falls under hate crime. I  
10 would think anybody wanting to do malicious crime  
11 against another human being is -- to me, it's just  
12 violent and malicious, either hate or someone thinking  
13 about what they want to do.

14 Q. Now I want to talk to you just for a minute or  
15 so about the way this system was set up. Realize, first  
16 of all, if you don't find someone guilty of capital  
17 murder, that's the end of the trial. Everybody goes  
18 home. So before you get to the punishment stage of the  
19 trial and you get to these questions, you had to have  
20 already found someone guilty of capital murder, which  
21 means you had to have found someone intentionally took  
22 the life of another person without any legal  
23 justification. They intended to. It wasn't an  
24 accident. It wasn't self-defense. They intended on  
25 killing somebody, kidnapping, as alleged in one part of

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1 the indictment. Or killing one or two persons during a  
2 criminal episode is alleged in the second part of the  
3 indictment.

4 So, a jury could find either/or, either of  
5 those two, or they could find both of those existed  
6 regardless of whether you have six people that think  
7 it's kidnapping/murder. Six people may think it's  
8 murder during the course of another murder. You would  
9 still return a verdict finding the defendant guilty, as  
10 charged in the indictment. Guilty of capital murder,  
11 because both scenarios are capital murder, as defined in  
12 our statute.

13 A. Okay.

14 Q. If you found someone guilty of capital murder,  
15 then you have to look at Issue Number One, which  
16 basically asks you to determine, do you believe beyond a  
17 reasonable doubt there is a probability that it's more  
18 likely than not that the defendant would commit criminal  
19 acts of violence that would constitute a continuing  
20 threat to society? If you had found someone  
21 intentionally took the life of another person without  
22 any legal justification during the commission of another  
23 felony, do you think that would be helpful in  
24 determining in your mind whether or not it was more  
25 likely than not that that person would commit criminal

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1 acts of violence in the future? Do you think that would  
2 be helpful in making that decision?

3 A. Yes.

4 Q. What other type of information, if you can  
5 think of something, would you like to know in helping  
6 make that decision? Would it be helpful to know about  
7 his background?

8 A. Yes.

9 Q. You talked about the trial you were in before,  
10 you weren't able to find out about the background of a  
11 person. That would not apply in a case like this. In a  
12 case like this, you would be able to find out about a  
13 person's background, criminal history, lack thereof, you  
14 know, all kinds of the character, the background, mental  
15 abilities or disabilities, any kinds of things about the  
16 individual themselves. Do you think that is helpful in  
17 making a determination as to whether or not a person  
18 would be a threat to commit criminal acts of violence?

19 A. Yes.

20 Q. If you found that a person was guilty of  
21 capital murder, then Issue Number One, you found they  
22 were a continuing threat to a probability to commit  
23 future acts of violence. Issue Number Two then asks you  
24 to look and see if there are any mitigating  
25 circumstances, what we call reasons -- any reasons why

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1 this person ought to receive life as opposed to death.  
2 Gives you the opportunity to change your mind from death  
3 to life. If a person -- you found a person guilty of  
4 capital murder and if you found they were a continuing  
5 threat to commit criminal acts of violence, in your  
6 mind, do you think there could ever be anything that's  
7 mitigating, that would give you a reason to give the  
8 person life as opposed to death?

9 A. Offhand, I would say no; but under the evidence  
10 or the character of the person, there might be some  
11 reason.

12 Q. You'd have to hear it to find out for sure?

13 A. Right.

14 Q. And are you open to going through that process,  
15 looking for --

16 A. Yes.

17 Q. Obviously, that question would give someone an  
18 out if they wanted to use it that way who had  
19 reservations about the death penalty because of  
20 something unrelated to the evidence. In other words,  
21 it's -- take, for example, a person like yourself, whose  
22 religion basically says, we shouldn't do the death  
23 penalty, though you, personally, believe that justice  
24 has to be done. If that's the right thing, that's the  
25 right thing. That question would give the opportunity,

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1 obviously, to always say life, even though the evidence  
2 may say that; and, you know, nobody would know. I mean,  
3 nobody would be -- other than you, you would know what  
4 you did.

5 Can I be comfortable with you, as a juror,  
6 in the belief that you will make your decision on what  
7 the law and the evidence says and not let your religious  
8 preference override the law and the evidence?

9 A. Yes.

10 Q. Okay. Thank you, ma'am. I appreciate your  
11 time, and I'll pass you.

12 THE COURT: Mr. Hill. Mr. Wentz. I'm  
13 sorry.

#### 14 VOIR DIRE EXAMINATION

15 BY MR. WENTZ:

16 Q. Good morning.

17 A. Good morning.

18 MR. WENTZ: I'm going to move, if I might,  
19 Your Honor. I'm having -- okay.

20 How are you this morning?

21 A. I'm okay. Thank you.

22 Q. (BY MR. WENTZ) You've had a chance to fill out  
23 a questionnaire. And what I'd like to do, if I might,  
24 is to go over some of your responses on the  
25 questionnaire. Would that be okay?

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1 A. That's fine.

2 MR. WENTZ: Your Honor, may I?

3 Q. (BY MR. WENTZ) And I think it's a little bit  
4 easier if you have it in front of you. What I'd like to  
5 do with you for maybe about the next fifteen minutes or  
6 so is try to learn a little bit more about you. And  
7 this is a pretty unfair process, because you've already  
8 told us so much about you. But as we talk, I'd really  
9 appreciate it if you would tell me the reasons for your  
10 answers; because they interest me just as much as what  
11 your answers are. Okay? So if you would maybe expound  
12 upon why you're saying what you're saying, I'd  
13 appreciate it.

14 You've indicated that you come here today  
15 in this capital murder situation with some religious  
16 reservations about the death penalty; but knowing what  
17 the process is, knowing what the death penalty system  
18 is, that you could participate in it. Is that an  
19 accurate statement of your feelings?

20 A. Yes, yes.

21 Q. In your conversation with Mr. McClellan, you  
22 used the word justice a couple of times in terms of what  
23 the result might be. Do you feel that justice, as it --  
24 as you see it, requires somebody receiving the death  
25 penalty if they're guilty of capital murder?

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1 A. I think so, yes.

2 Q. So, in other words -- and it's a really big --  
3 in my mind, it's always been a really big determination  
4 when somebody looks at the evidence, believes beyond a  
5 reasonable doubt that a crime of capital murder  
6 occurred; and they brand that person a capital murderer.  
7 Because to me, that says an awful lot about their  
8 conduct. It's reprehensible.

9 And then you get to that punishment phase.  
10 And I guess what I need to ask you, if I could -- and if  
11 you could elaborate a little bit more. You know that we  
12 have these Special Issues. Are you telling us that,  
13 having found somebody guilty of capital murder during  
14 the intentional taking of somebody's life, that when it  
15 comes to the punishment phase, that you would always  
16 answer the Special Issues in such a manner that the  
17 person would receive the death penalty so that justice  
18 might occur?

19 A. Yes, I would.

20 THE COURT: Ma'am, listen to the question.  
21 Would you always answer those questions in such a way  
22 that the death penalty occurs? That would mean no  
23 matter what the evidence was? And if that is your  
24 answer, that's fine; but that's -- I'm not satisfied  
25 that, based upon what I've heard from you so far, that

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1 that is your answer.

2 VENIREPERSON: I'm sorry. I guess I  
3 misunderstood.

4 THE COURT: The question, as I heard it  
5 was, if you found somebody guilty of capital murder,  
6 would you always answer these questions in such a way  
7 that the death penalty was imposed?

8 VENIREPERSON: Oh, I'm sorry.

9 THE COURT: See, always is the key word in  
10 that question.

11 VENIREPERSON: No, I couldn't say that I  
12 would answer those questions like that.

13 Q. (BY MR. WENTZ) Okay. When you looked at the  
14 questionnaire -- and could you tell me why your feelings  
15 are that justice might incline you to feel that the  
16 death penalty would be the appropriate punishment for  
17 somebody who is guilty of capital murder? Just what are  
18 your feelings that lead you towards that direction?

19 A. Well, I guess in our society, the way there is  
20 so many crimes that if we don't believe in the law, that  
21 they are going to be just that someone who has committed  
22 a crime should be punished. If it's a crime that  
23 deserves the death penalty, then it should be. It's  
24 just, to me -- I guess maybe justice is not the right  
25 word. But to me, that's how I see it, that someone that

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1 has committed a crime, /TWERPT society here (CH) and we  
2 come to court. And based on the evidence and  
3 everything, then we make that call, whether someone has  
4 committed a crime. And if they have, then they need to  
5 pay the price of what -- of that crime.

6 Q. Okay. Now when we talked about Special Issue  
7 Number One, you know that when it comes time to answer  
8 that Special Issue, that you will always have the facts  
9 of the case. In other words, you will have the facts  
10 that prove to you beyond a reasonable doubt that this  
11 person is guilty of capital murder. And it asks you to  
12 determine for yourself whether or not you believe there  
13 is a probability that that person would commit future  
14 criminal acts.

15 And I think you've indicated that you have  
16 a concern with crime occurring. And we talked about  
17 probability, and I think the Judge even mentioned  
18 possibility. Do you feel that the person who commits a  
19 capital murder is exactly the kind of person who is  
20 probably going to commit criminal acts of violence in  
21 the future?

22 A. That could be, but I can't say for sure that a  
23 person that commits a capital murder will be a threat to  
24 society after that. But if everything is with the  
25 evidence and everything that they have the character,

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1 the person, then it has to be -- it's a decision based  
2 on what is represented.

3 Q. Okay. And the reason I ask you about that is  
4 that you would say, basically, what these words mean,  
5 it's just what the Judge told us, what they mean to you.  
6 And we use that word, probability or possibility. Do  
7 they mean the same thing to you, or do you see a  
8 distinction? Or tell me about that.

9 A. Well, I took his explanation of probability as  
10 opposed to the other two words that he used. I can't  
11 remember exactly right now those other two words, but  
12 there is a distinction between probability and --

13 Q. Possibility?

14 A. -- possibility, right.

15 Q. I know when you come to find somebody guilty of  
16 a capital murder, obviously that tells you a whole lot  
17 about that person. At least, I would think that it  
18 would. What does it tell you about the person if you  
19 found them guilty of capital murder?

20 Let me give you an example. If I hear  
21 that somebody has gone out and gotten two public  
22 intoxications within a short period of time, I'm going  
23 to assume pretty much that that person probably has a  
24 problem with alcohol. You know, that's what I get from  
25 that type of decision. What type of information does

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1 finding somebody guilty of capital murder tell you.

2 A. Tells me that they had a situation where they  
3 just -- they decided they were going to do whatever they  
4 were going to do, without even thinking of what the  
5 outcome was going to be, so they didn't take nothing  
6 into consideration. It was just an act --

7 Q. Okay.

8 A. -- of violence.

9 Q. Given your feelings, you've talked about  
10 Special Issue Number One or Two; and you've indicated  
11 that you feel that you could -- that's not an automatic  
12 given for you? Is that what you're telling me?

13 A. Right.

14 Q. When you were talking with the prosecutor about  
15 Special Issue Number Two, I think you indicated that --  
16 I think your words were, Nothing would be mitigating;  
17 because at the point that Special Issue Number Two comes  
18 into play, you've found a person guilty of a capital  
19 murder. You also have found that person is going to be  
20 a future danger to society. And from what you've told  
21 us about the punishment fitting the crime and your views  
22 of justice, could you answer Special Issue Number Two  
23 yes?

24 A. Would it be yes for me?

25 Q. No. Could you ever imagine answering Special

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1 Issue Number Two yes, having found somebody guilty of  
2 capital murder, and believe they were going to be a  
3 future danger to society?

4 A. Okay, yeah. You're talking about Special Issue  
5 Number Two or --

6 Q. Two, yes, I'm sorry. You can see why I moved?

7 A. Yeah.

8 THE COURT: Question is, is it possible  
9 for you to answer the question yes, ma'am, if the  
10 evidence would support a yes answer?

11 A. There is a possibility, yes.

12 Q. (BY MR. WENTZ) And Special Issue Number Two,  
13 as you've been talking with Mr. McClellan about it, he's  
14 talked about this search for mitigation. But it's not  
15 just a search. It's also the determination for you as  
16 to whether or not anything could ever be sufficient to  
17 warrant somebody receiving a life sentence, who was a  
18 capital murderer, who was a future danger to society?

19 So, you can very well commit yourself to  
20 the search for this thing called mitigating evidence.  
21 But you think there is anything that could ever be  
22 sufficient for you that would allow you to answer that  
23 Special Issue yes?

24 A. Something sufficient, now, I would have to say  
25 yes.

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1 Q. Could you tell us what that might be?

2 MR. MCCLELLAN: I'd object, Your Honor.

3 THE COURT: Sustained.

4 VENIREPERSON: Well, if I understand this  
5 correctly, based on the character of the person, of  
6 course -- I think the example the Judge put before us  
7 was if someone that committed a crime maybe a few days  
8 before had run in to save children's lives from a  
9 burning building or something like that, that kind of  
10 character, I would have to say that I would consider  
11 that, but only if it applies -- I mean, only if there is  
12 something that would really stand out beyond everything  
13 else that was presented, you know, the character of the  
14 person, who led him to commit a crime, the crime that he  
15 committed. But if there was something about a person,  
16 then I would have /TKHRAOPLDZ question.

17 Q. (BY MR. WENTZ) Okay.

18 A. Is that what you're asking?

19 Q. I'm listening. Whatever you're telling me is  
20 the answer, that's fine. One of the things -- and I saw  
21 the movie; I didn't read the book -- when that film,  
22 "Dead Man Walking," came to be revisited -- or it came  
23 out that what happened in trial was really different  
24 than what happened in reality. It was still bad. I'm  
25 not saying it wasn't. But you remember how at the end

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1 we realized a bad crime had happened, but it was a  
2 different crime than happened in court in terms of what  
3 the evidence was? Do you think you could consider how a  
4 crime occurred and determine Special Issue Number Two?  
5 Because it asks you to consider the circumstances of the  
6 crime, the person's character, as well as his moral  
7 culpability.

8 A. I didn't understand your question.

9 Q. Well, you know, sometimes there may be some  
10 reservations you have about the person, how the crime  
11 was done. Maybe it wasn't self-defense, but there was a  
12 cloud over how the crime occurred. Do you see how that  
13 could be a factor for you to consider?

14 A. I still don't understand.

15 Q. I guess what I'm saying is, you look at all the  
16 evidence.

17 A. Right.

18 Q. And that's the circumstances of the crime.  
19 There may be something about how the crime occurred that  
20 renders the person less blameworthy, such as -- you  
21 know, you used this example with the Judge. There may  
22 be a situation where there may be some doubt about who  
23 may have done what. Not enough that you're not sure  
24 beyond a reasonable doubt, but there may be some  
25 lingering concern of yours about how the crime occurred.

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1 And you could say that, Well, this concern does give me  
2 some uneasiness; and maybe life is the proper punishment  
3 for this particular crime. Might be less responsible  
4 than somebody else?

5 A. Okay.

6 Q. And that's the type of evidence that you could  
7 consider, also?

8 A. I could consider that.

9 Q. One of the things people often want is feelings  
10 of remorse and sorrow for what somebody did in terms of  
11 punishment. And you know that a defendant has a right  
12 against self incrimination. Would you require the  
13 defendant to testify at the punishment phase of the  
14 trial? Before you could answer those Special Issues no  
15 or yes, before you would find him worthy of life, would  
16 you require him to testify?

17 A. No.

18 Q. Because realistically, that's really the only  
19 place those personal feelings of remorse could come  
20 from, or regret. Would you agree with me?

21 A. Yeah, I would agree to that; that's right.

22 Q. But you would not require him to testify at the  
23 punishment phase of the trial? Is that what you're  
24 telling us?

25 A. Well, I guess no, I wouldn't require.



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1 Q. Let me look at your questionnaire. Ma'am, what  
2 would you like to tell us about yourself that you think  
3 we should know before I sit down?

4 A. Other than I pride myself in being a citizen,  
5 and I want crime -- it is very important that crime does  
6 start -- that crime -- there is programs to help people.  
7 Maybe not help, but just -- I just feel like there is  
8 just too much crime. And I have children, and I want  
9 them to have a successful adult life like everybody else  
10 and not in fear of violent crime.

11 Q. Given your feelings, the importance of this  
12 case, can you presume Charles Mamou not guilty, innocent  
13 at this time?

14 A. Yeah, because I haven't heard anything.

15 Q. Thank you very much.

16 THE COURT: Thank you, Miss Garcia.

17 Listen to me, ma'am. In just a second I'm going to  
18 excuse you. Before I do, I will tell you that we want  
19 you back here two weeks from today. As I told you the  
20 other day, we're talking to folks on an individual basis  
21 for the purpose of creating a pool or a panel of about  
22 forty-eight people.

23 We'll have all forty-eight people here two  
24 weeks from today. Every one of those people will have  
25 been through exactly what you've been through. You may

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1 spend as much as two hours with the group, but it's not  
2 going to be a long process is what I'm saying. At the  
3 conclusion of that process, everybody will leave here  
4 knowing definitely whether they are or are not a juror  
5 in the case.

6 VENIREPERSON: Okay.

7 THE COURT: Between now and when we see  
8 you again, Miss Garcia, don't you alter your schedule  
9 for us. Do your professional things just exactly like  
10 you would ordinarily do them. Do your personal things  
11 like you would ordinarily do. If you have a chance to  
12 leave town for a couple of days, take the chance.

13 All that we ask of you between now and  
14 when we see you next is this: Do not talk about this  
15 case with anybody. Do not permit anybody to talk about  
16 this case. If there should be any media treatment about  
17 this case, avoid it. Anything about this case on the  
18 television, refuse to watch it. Newspaper, refuse to  
19 read it. Radio, refuse to hear it.

20 And the reason for each of those  
21 restrictions, Miss Garcia, is to attempt to accomplish  
22 the same result and that's this: If you become a juror  
23 in the case, the decision that you reach, whatever it  
24 is, that decision must be based exclusively upon the  
25 information that you received from here inside the

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1 courtroom. It cannot in any way be affected or  
2 influenced by any information you receive outside the  
3 courtroom.

4 VENIREPERSON: Okay.

5 (Court gives further instructions and  
6 venireperson is excused for the day.)

7 JAMES THOMAS PRYOR,  
8 having been first duly sworn, testified as follows:

9 VOIR DIRE EXAMINATION

10 BY THE COURT:

11 Q. First off, Mr. Pryor, let me ask you this:  
12 Taking into account the things we talked about whatever  
13 day it was, add to it the things we've talked about  
14 today. Out of everything that we have talked about so  
15 far, do you have any questions at all from me?

16 A. No.

17 Q. Is there anything, Mr. Pryor, that to this  
18 point we have not touched on that you feel as though we  
19 ought to put it on the table and address it, because it  
20 might have some bearing on your service as a juror in  
21 this case?

22 A. Yes, sir.

23 Q. Okay. Sir?

24 A. I mentioned in my survey, and also the other  
25 day when you asked I raised my hand, that I'm on a

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1 transition team for Exxon with Mobil. And that  
2 transition team has been working for several weeks and  
3 will continue to work close through the change of  
4 control, which is anticipated to occur on October the  
5 1st, 1999, which you could read that in the paper this  
6 morning. There is only -- out of 120,000 employees  
7 between the two companies, there is less than a thousand  
8 on the transition teams. And the purpose is to plan  
9 acquisition and talk to the employees at the time of  
10 change of control. It's very, very possible that that  
11 change of control is going to occur shortly before or  
12 during this trial, and I'm in a position to where I will  
13 either be here or there. And either place, I'm going to  
14 have my mind in two different places; but I'm the only  
15 excise tax manager for Exxon in the country, and I have  
16 some fifty employees that I have to worry about. So,  
17 that's my major concern. Other than that, everything  
18 I've heard I could handle.

19 Q. If I'm hearing you correctly, we know that if  
20 after today you come back on the 29th, and if nothing  
21 works out on the 29th and if you're not selected on that  
22 day, everything is okay?

23 A. Absolutely.

24 Q. Okay. Then let's just ride with that in mind.  
25 We'll see what happens then.

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A. Okay, that's fine.

Q. Anything other than that, anything in your personal life, any health situations you feel might have --

A. No, sir.

Q. Okay. I guess the sum total, Mr. Pryor, before the lawyers talk with you -- sum total of what I was trying to do this morning was to try and point out that there is no automatic answer in a situation like this. The bodies from which all the information is extracted is the same common body, but it asks different questions. And therefore, you have to look at it a little bit differently. And I'm sure you have far better examples in your business of what you do than what I can dream up now. But I'm going to encourage you to ask whatever question you have of me, if you do have one. I'm hopeful you don't. And if you don't, I'm going to turn you over to Mr. McClellan.

THE COURT: Go ahead, sir.

VOIR DIRE EXAMINATION

BY MR. MCCLELLAN:

Q. Mr. Pryor --

THE COURT: Excuse me. I don't know if you guys were doing some stuff; but if I heard Mr. Pryor correctly, he's copesetic for today, as well as for the

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there were commitments, if there are other things in life that are going on in their life, whether it maybe somebody was having cancer treatment, or somebody's going through a divorce, or somebody has a merger situation, if it's going to keep you from giving your undivided attention to this case -- because it's important for us; it's important for the defendant. His life is at stake, and we have victims that we represent. And it's very important for us. We want people to give their undivided attention to this. If you can do that say, You bet you I can. Don't worry about it. Let's go on. If there is doubt in your mind about your ability to do that, that's what we need to know now.

A. Absolutely. What I'm saying is I can't think of any other circumstance in my life that would keep me from doing that except something similar to what I'm describing to you right now.

Q. So, you're saying you can assure us you can give your undivided attention?

A. No, I cannot.

THE COURT: Mr. Pryor, thank you very much.

There is an agreement that Mr. James Pryor, Venireperson Number 49, may be excused. Is this your agreement, Mr. McClellan?

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29th.

Q. (BY MR. MCCLELLAN) Right, but the real issue -- and we're going to ask him about that. Today, or the 29th, or whatever days, if you're on the jury, are you going to be able to give your undivided attention to what's happening in the courtroom? Which I believe everybody would possibly be in agreement that you need to do in order to be a fair juror to both sides. If you can, that's fine. If you can't, we need to know that. Might as well know it today.

A. Absolutely. I think that if the change of control occurs, let's say, shortly before or during this trial, then I'm put in a position to where somebody is having to talk to my employees while I'm here telling them they have a job, what that job will be, and where it will be.

And to answer your question as directly as I can, if that happens during this trial, it's going to be very difficult for me to not worry about what's going on there and probably having to, once the trial day is over, check in to see what's going on.

Q. All right. And what I'm looking for -- and only you know the answer. The law doesn't allow us to excuse somebody because they don't want to be here or because they have work commitments or whatever. If

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MR. MCCLELLAN: Yes, Your Honor.

THE COURT: Mr. Hill?

MR. HILL: Yes, Your Honor.

THE COURT: Mr. Wentz?

MR. WENTZ: Yes, Your Honor.

THE COURT: Yours, Mr. Mamou?

THE DEFENDANT: Yes, Your Honor.

THE COURT: Are you agreeing he may be excused?

THE DEFENDANT: Yes, sir.

ROSE CRAWFORD TURNER,  
having been first duly sworn, testified as follows:  
VOIR DIRE EXAMINATION

BY THE COURT:

Q. Miss Turner, first let me ask you this: Out of everything that we talked about, both this morning, as well as the other morning when the whole group was here, do you have any questions at all for me?

A. No, sir.

Q. Is there anything, Miss Turner, that up to now we have not yet talked about that you feel as though we should, because it might have some bearing on your service as a juror in this case?

A. No, sir.

Q. Is there anything that you can think of at the

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1 present, ma'am, whether it might be something that has  
2 to do with your family, something that has to do with  
3 your job, something to do with your health, or something  
4 unrelated to those things, that you think in any way  
5 would interfere with your ability to be a juror in this  
6 case during the time frame that we've talked about?

7 A. No, sir.

8 Q. Can you see from our conversation this morning,  
9 Miss Turner, that in a trial like this, everybody --  
10 both sides -- deserve to have jurors who can return a  
11 verdict based upon the evidence in that particular case?

12 A. Yes, sir.

13 Q. And can you see how just because somebody might  
14 be found guilty of capital murder, that fact and that  
15 fact alone does not necessarily mean how those questions  
16 should be answered?

17 A. Yes, sir.

18 Q. You'll have to look at everything. And does  
19 that sound like something you can do?

20 A. Yes, sir.

21 Q. Any of these rules that we've talked about that  
22 you find you have any disagreement about?

23 A. No, sir.

24 Q. Before I turn you over to the lawyers, do you  
25 have any questions?

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1 excuse me -- when you think of cases where you think the  
2 death penalty might be proper?

3 A. When a life is taken maliciously, and no  
4 concern for the victim, and the consequences of what is  
5 brought about.

6 Q. Okay. All right. Now, there is something in  
7 your questionnaire I want to go over and ask you and try  
8 to get a better feel for what you were telling us in the  
9 questionnaire.

10 A. Okay.

11 Q. You indicated that you had a cousin who was  
12 killed at age thirteen, and I think you were the same  
13 age?

14 A. Yes, sir.

15 Q. What happened in that event? Is that -- well,  
16 how did he get killed?

17 A. My uncle was having an adulterous relationship  
18 with the person that did the killing, and he was angry.  
19 So, the person came back and shot through my aunt's  
20 house.

21 Q. And happen to strike him?

22 A. And striking him as a result.

23 Q. Was he prosecuted?

24 A. Yes, sir.

25 Q. What happened to that?

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1 A. No, sir.

2 THE COURT: Mr. McClellan.

3 MR. MCCLELLAN: Thank you, Your Honor.

4 VOIR DIRE EXAMINATION

5 BY MR. MCCLELLAN:

6 Q. Miss Turner, we're going to have to get you to  
7 say something other than "yes, sir" and "no, sir."  
8 We're going to have to figure out another question here.  
9 I appreciate your responses.

10 Let me just -- my name is Lyn McClellan.  
11 This is Claire Conners. We represent the State of Texas  
12 in this case. Can you just tell me in your own words  
13 what your opinion is about the death penalty?

14 A. Well, the death penalty is a law that's  
15 established by the State; and I've learned to accept the  
16 laws, because all things come from God. And whether I  
17 see it as good or bad, it exists because of the law of  
18 the land and I accept it.

19 Q. Okay. If you were making the laws, would you  
20 keep the death penalty or would you do away with it?

21 A. Keep it.

22 Q. Okay. Do you think it's proper punishment for  
23 certain types of crimes?

24 A. I do, sir.

25 Q. What kinds of things come to your mind --

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1 A. Well, this happened in Ohio. And at that time,  
2 Ohio did not have a death penalty; so, he was just  
3 sentenced to life.

4 Q. Do you think that was proper?

5 A. Yes, sir.

6 Q. You also indicated you had, I believe, a family  
7 or a friend of yours whose son was killed?

8 A. Yes, sir.

9 Q. How long ago was that?

10 A. Oh, possibly about three years ago.

11 Q. What happened? What were the circumstances  
12 surrounding that?

13 A. He was dealing with drugs, and at some point in  
14 time his life was -- he was killed.

15 Q. Okay. Over drugs?

16 A. Over drugs.

17 Q. Was anybody prosecuted for that crime?

18 A. I don't know. I didn't follow up with it after  
19 that.

20 Q. Do you think somebody should have been  
21 prosecuted for that crime?

22 A. I don't know the circumstances, so I can't say.

23 Q. Obviously, he was dealing in drugs and he was  
24 doing wrong.

25 A. Uh-huh.

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1 Q. Do you think that justifies him being killed?

2 A. No, sir, I don't think it justifies him being  
3 killed.

4 Q. All right. Now, you say you have a daughter  
5 who was working at T.D.C. I guess "was" means she no  
6 longer is?

7 A. Right.

8 Q. As a correctional guard?

9 A. Right.

10 Q. What unit did she work in?

11 A. She worked at a couple of units. She worked in  
12 Rosharon, she worked in Dayton, and she worked in  
13 Beaumont.

14 Q. What does she do now?

15 A. She's now going to school for a peace officer  
16 at Houston Community College.

17 Q. Okay. And have you talked with her about her  
18 job?

19 A. Oh, yes, on numerous occasions.

20 Q. Told you about things that happen in the  
21 penitentiary, et cetera. Anything about that or that  
22 relationship or those conversations that would affect  
23 you in being a juror in a case like this?

24 A. No, sir.

25 Q. Okay. She wants to be a peace officer?

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1 evaluate evidence that has been given to us and then to  
2 come up with a decision based on the evidence. And so,  
3 I don't see it as I am personally taking someone's life.

4 Q. Right. I understand. Do you -- you know, some  
5 people come to us and say they believe in the death  
6 penalty. They think it's a proper type punishment for  
7 certain types of crime. Some other people, though, come  
8 in and say they don't think they could ever participate  
9 in a process where they would be called upon to make  
10 decisions if they knew the decisions they were going to  
11 make would result in this Judge ordering the execution  
12 of this defendant sitting over here on trial. Do you  
13 have any doubts about your ability to participate in  
14 that type of process and make that type of decision if  
15 that's what the law and the evidence called for?

16 A. No, sir, I have no problem.

17 Q. All right. Now, also, you indicated that your  
18 husband had been to the penitentiary?

19 A. Yes, sir.

20 Q. And for drugs?

21 A. Yes, sir, for drugs.

22 Q. And how long ago was that?

23 A. As a matter of fact, he's still there.

24 Q. Okay. All right. When was he sent there?

25 A. It's been eight years.

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1 A. Yes, sir.

2 Q. She wants to continue in this area?

3 A. Yes, sir.

4 Q. Now your other daughter, I think, is in medical  
5 school?

6 A. Yes, sir. She just graduated from University  
7 of Houston, and she wants to go to med school at Baylor  
8 College. And she now works at Baylor and is in the  
9 biochemistry lab.

10 Q. All right. Very good. Now, you also  
11 indicated -- well, you're also a nurse in the nursing  
12 field, right?

13 A. Yes, sir.

14 Q. Your life is dedicated to helping people and  
15 taking care of people and making them well. We're now  
16 asking you to possibly sit on a jury where you would be  
17 asked to take someone's life. Would that cause a  
18 problem in that you would say, Wait a second. I spend  
19 all my life helping people, and now they're asking me to  
20 sit over here and possibly take someone's life if I find  
21 out they did something wrong? Would that cause you a  
22 problem?

23 A. I don't see it as I'm taking someone's life.

24 Q. Okay.

25 A. The way I see it is I'm sitting here to

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1 Q. Okay. How much time did he get?

2 A. He got forty-five years.

3 Q. Okay. For possession, or delivery, or what?

4 A. They said possession with the intent to  
5 deliver.

6 Q. Okay. And did he have a trial?

7 A. Yes, sir, he had a trial.

8 Q. And did you attend the trial?

9 A. Yes, sir, I did.

10 Q. Did you think he was treated fairly or  
11 unfairly?

12 A. I thought he was treated fairly.

13 Q. Do you think what he did was wrong?

14 A. I think -- this is what I tell him: These are  
15 the consequences of your choices you made. You make bad  
16 choices, you have bad consequences. You make good  
17 choices, you have good consequences. And these are just  
18 the consequences of your choices.

19 Q. Is this the first time he had been in trouble  
20 with the law?

21 A. This is the first time since we were together;  
22 but he told me twenty years ago, prior to us being  
23 married, he had been in trouble with the law when he was  
24 twenty.

25 Q. Had he gone to the penitentiary then?



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1 A. He said he went for five years.

2 Q. What crime then?

3 A. I think it was robbery he told me.

4 Q. Did you know that when you married him?

5 A. No, sir.

6 Q. Did you find that out then before the trial or  
7 during the trial?

8 A. I found it out before the trial.

9 Q. Did you find out before he committed the crime  
10 of the drugs?

11 A. I found it out during that time.

12 Q. During that time. That's what brought it up?

13 A. That's what brought it all up.

14 Q. Now, uniquely -- to me, anyway -- when you list  
15 in here the people you respect most, you put your  
16 pastor, your mother, and your husband.

17 A. Because the reason why I put my husband,  
18 because he's accepted it. He's understood. He now  
19 learns his errors. And hopefully, with God on his side,  
20 he can come out whenever he comes out and become a  
21 productive citizen.

22 Q. Okay. You put on your questionnaire you were  
23 separated. I assume that's because he's in the  
24 penitentiary, and you're here, and not any other type of  
25 conflict?

88

1 A. Exactly.

2 Q. Okay. How did your daughters accept that?

3 A. It was rough for all of us. It was pretty  
4 rough for all of us, but that's -- at that point in  
5 time, that's when we really got close to the Lord. And  
6 through our closeness with God, it held us together; and  
7 it has given us all a different viewpoint on life, and  
8 we were able to go on. And my daughter finished  
9 school -- because it's been eight years -- and she  
10 finished college. And my other babies -- my oldest one  
11 still wants to be in law enforcement, so I use that as  
12 an experience in life.

13 Q. You indicated you don't believe people ought to  
14 have -- the only people that ought to have handguns are  
15 police?

16 A. Yes, sir.

17 Q. Any bad experiences with handguns that  
18 personally affected you or your family?

19 A. Just the incident with my cousin, when he was  
20 killed at thirteen.

21 Q. Finally, let me ask you one other thing.  
22 You're obviously a very religious person. You accept  
23 your religion and practice it very sincerely. You  
24 indicated your pastor is one of the persons you most  
25 respect. Do you know what your church's position is, if

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1 they have one, on the death penalty?

2 A. There is some people in my church that don't  
3 agree with the death penalty at all, but I attribute  
4 that to their lack of knowledge to what God says about  
5 authority. And when we have that conversation, I bring  
6 it up to them, Well, do you know what God says about  
7 authority, whether you see it as good authority or bad  
8 authority.

9 Q. What is it about your position on what God says  
10 about authority?

11 A. God says authority -- he has allowed all  
12 authority to be in existence, whether I see it as good  
13 authority or whether I see it as bad authority. And if  
14 I have a problem with authority, ultimately I have a  
15 problem with what God says.

16 Q. Would you have any problem with sitting on a  
17 jury, making a decision about the death penalty and,  
18 say, in finding someone ought to receive the death  
19 penalty for a crime they've committed, going back to  
20 your church and people saying, I can't believe you sat  
21 in judgment and found somebody guilty and then found  
22 they ought to get the death penalty?

23 A. No, sir. And I've talked to my pastor about  
24 this, and he cleared it up to me. So, I say whatever --  
25 if I'm chosen, then I'll do what I feel is right within

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1 my soul. And that's how I see it.

2 Q. What did your pastor say about it?

3 A. I said, he's the one that took me to the  
4 scripture on authority again and told me we have to  
5 learn how to abide by the rules that exist in our  
6 society today.

7 Q. Okay. The job of a juror is to a true verdict  
8 render based on the law and the evidence. I would  
9 expect that you could not tell me what you're going to  
10 do in a case until I can tell you what the evidence is  
11 going to be in the case. Would that be right?

12 A. That's correct.

13 Q. So, you don't have any preconceived notions.  
14 Now, they're easy to come by because somebody says,  
15 Well, if you found someone guilty of capital murder,  
16 well, that automatically conjures up in somebody's minds  
17 something; but as the Judge told us a long time ago, we  
18 can't talk about the facts of this case. That's going  
19 to come from the witness stand. We're not going to talk  
20 about it during voir dire. We're just trying to find  
21 people who can listen to facts and determine the result  
22 that ought to happen as a result of deciding what the  
23 facts are and following the laws the Court gives you.

24 That means, as I say, there is no case in  
25 the State of Texas or anywhere else in the nation that I

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1 know of where you get the death penalty, automatically,  
2 as a result of finding someone guilty of capital murder.  
3 It will always depend upon the facts and circumstances  
4 both as to whether or not a person is guilty or not and  
5 to whether or not what the punishment ought to be;  
6 because there is two possible punishments, life or  
7 death. But they're decided by answering questions up  
8 here and not by going back and voting for life or death.

9

10 So, if someone tries to commit me to what  
11 I would do, I think my automatic response would always  
12 have to be, Well, I'd have to hear the facts and I'd  
13 decide. Somebody might say, Well, if I found someone  
14 guilty of capital murder, going to Issue Number One,  
15 wouldn't I think that there is at least a probability  
16 that they would commit criminal acts of violence that  
17 would constitute a continuing threat to society?

17

18 Well, in some cases there well may be.  
19 But there may be other circumstances where I find  
20 someone guilty of capital murder; but because of their  
21 background and character and everything, I think they've  
22 learned from their experiences. I don't think they'll  
23 be a threat in the future. So, are you open to both  
24 issues when waiting to see what the evidence shows and  
25 what is proven?

25

A. Yes, sir, I am.

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1 ask you to go back and look at all the evidence and  
2 determine in your mind, do you think there are any  
3 reasons there why this person ought to get life as  
4 opposed to death?

5

6 Now, I could ask you if you could think of  
7 any reasons now; and I suggest you would probably say,  
8 Well, I don't know. Give me all the evidence, and maybe  
9 then I'll tell you. And that's what you have to do.  
10 You have to wait till you hear the evidence, look back  
11 at that. And if there is a reason that you think, you  
12 know, because this guy deserves death, there is  
13 something in this case, something in his background,  
14 something in his character, there is something about the  
15 facts of the case, wherever it may come from, that  
16 convince me that life is more appropriate than death,  
17 then that's the decision you, as an individual, have to  
18 make. And all twelve have to make their individual  
19 decision. Okay?

19

A. Uh-huh.

20

21 Q. It gives you that opportunity, kind of a  
22 fail-safe, to make sure that's what you want to do and  
23 to change your vote if you find there are reasons to  
24 change your vote. Okay?

24

A. Uh-huh.

25

Q. Look at your questionnaire. From talking to

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1 Q. Do you visit your husband in the penitentiary?

2

A. Yes, sir, I do.

3

Q. Do your daughters, also?

4

A. Yes, sir, we do.

5

6 Q. We represent the State of Texas. We're going  
7 to be seeking to have jurors find the defendant guilty  
8 of capital murder, try to present evidence that proves  
9 to y'all beyond a reasonable doubt the defendant's  
10 guilty of capital murder.

10

11 Then we're going to present further  
12 evidence that we hope convinces you beyond a reasonable  
13 doubt as to Issue Number One. There is a probability he  
14 would be a continuing threat to future acts of violence.  
15 You could answer that yes; and on Issue Number Two,  
16 while there is no burden of proof, we're going to  
17 contend the evidence will not raise any mitigating  
18 circumstance that is sufficient to change your vote from  
19 death to life.

19

20 Mitigating circumstances mean reasons why  
21 someone might ought to get a lesser punishment for the  
22 crime they've committed. And Issue Number Two asks you,  
23 after you found the defendant guilty, did you -- because  
24 you don't get there unless you do that, and after you've  
25 answered Issue Number One yes, because you don't get to  
Issue Number Two unless you've done that. We would then

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1 you, I can't imagine there is anything that I need to  
2 know that I don't already know; because you sound like  
3 the type of person who will call it like you see it and  
4 not call it till you do see it.

5

A. Uh-huh.

6

7 Q. Anything -- you know I'm seeking the death  
8 penalty. We're seeking to get that. Is there any  
9 reason we ought to be uncomfortable having you sit as a  
10 juror in a case like this?

10

A. No, sir.

11

12 Q. Thank you, ma'am. I appreciate your time, and  
13 I'm going to pass you.

13

THE COURT: Mr. Hill.

14

MR. HILL: Thank you, Judge.

15

VOIR DIRE EXAMINATION

16

BY MR. HILL:

17

Q. Hi, Miss Turner. How are you?

18

A. I'm fine. How are you?

19

20 Q. I'm doing all right. My name is Wayne Hill.  
21 Kurt Wentz and I both represent Mr. Mamou. Obviously,  
22 Mr. McClellan has asked you a series of questions, as he  
23 has with each juror. And we do, also, and try to  
24 determine whether or not there is something either in  
25 your background, your makeup, who you are, what you do,  
that causes either side to be the least bit

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1 uncomfortable.

2 Because obviously, it wouldn't do very  
3 much good to have this process and just take twelve  
4 people, all of who have exactly the same strong beliefs  
5 in the death penalty, for instance. Because what if you  
6 and eleven other people listen to all of the facts of  
7 the case, you conclude that the State has proven their  
8 case beyond a reasonable doubt, and you find our client  
9 guilty of capital murder. Well, we might as well just  
10 sit back and expect the worst to happen at that point,  
11 right?

12 So, that's why we do this. What I'd like  
13 you to do for me is understand there are no right or  
14 wrong answers. When we say we don't care what your  
15 answers are, that's not exactly correct. We care very  
16 much what your answers are. We want to make sure you  
17 don't feel any pressure to give a certain type of  
18 answer. If you give an answer and you feel strongly  
19 about a topic, tell us. You're not a juror just yet.  
20 And if you say something, or if there is a particular  
21 area of the law that you have a particular disagreement  
22 with -- and you and only you would know that -- and you  
23 feel like it's such a strong disagreement you can't  
24 really follow that law, you couldn't take the oath to  
25 follow that law, please let us know now; because it

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1 doesn't do anybody any good to find out two-and-a-half,  
2 three weeks from now when you're sitting on the jury and  
3 for the first time you reveal maybe inwardly to  
4 yourself, I should have said something to them. Now I'm  
5 faced with a predicament.

6 It's an extremely important case.  
7 Everybody recognizes that. Take a look at Mr. Mamou.  
8 What goes through your mind when you're a prospective  
9 juror? There is a face to this individual. What do you  
10 see? What do you think?

11 A. Well, all I see is a young man convicted of a  
12 crime.

13 Q. I'm sorry?

14 A. All I see is a young man accused of committing  
15 a crime.

16 Q. Okay.

17 A. That's all I see.

18 Q. What do you think when you hear the nature of  
19 the crime that's alleged against him?

20 A. It's a serious crime. Lives have been  
21 destroyed and sadness in both cases.

22 Q. Okay. What if we were sitting here -- we are  
23 sitting here actually. And I'm going to ask you in a  
24 hypothetical sense to make the best argument you could  
25 make for giving a capital murderer life in prison.

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1 A. What would it be? I guess I really couldn't  
2 answer that, because I've never been put in a situation  
3 to be able to call out of my own experience anything  
4 that could -- I could argue that point; so, I really  
5 couldn't say.

6 Q. But you find it -- is it more comfortable  
7 making the argument for you why a person convicted of  
8 capital murder should get the death penalty?

9 A. No.

10 Q. Okay. You see why I asked that question?  
11 Because it would concern me greatly if I'm talking to an  
12 individual and potentially having to have that person  
13 make my client's decision, or make the decision on my  
14 client's case and they feel so strongly about a  
15 particular type of punishment that if that should come  
16 up, it's pretty much a certainty as to what's going to  
17 occur. I think it takes a lot for any juror to sit and  
18 listen to a case like this.

19 And more importantly, if they ultimately  
20 find that the State has discharged its burden of proving  
21 the case beyond a reasonable doubt, then they've got to  
22 struggle with whether or not they're going to take that  
23 man's life or not. You know, starting out, if you find  
24 somebody guilty of capital murder, you've held that  
25 person responsible for causing a person's death, or in

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1 this case the possibility of showing that two people  
2 died during the same transaction.

3 Okay. You know, we use this word,  
4 mitigation. It's asked to you in one of the questions  
5 in the questionnaire. It's even put in the charge.  
6 What does that mean to you? When you hear the word  
7 "mitigation," is that even a word that you would think  
8 to use prior to coming in here today?

9 A. No, sir, it wouldn't. No, sir, it's not.

10 Q. Is there a word that, in your mind, kind of can  
11 be used in place of the word, mitigation?

12 A. I guess from listening to the Judge this  
13 morning, mitigation would mean any possibilities, any  
14 evidence, any things that have arisen to cause me to go  
15 either one way or another.

16 Q. Do the words "extenuating circumstances" or  
17 "reasons" sound like words that could be replaced for  
18 the word "mitigating"?

19 A. Extenuating circumstances or reasons? I guess  
20 so, from my understanding of it.

21 Q. Okay. What do you think if you found -- and  
22 again, we're talking hypothetically. We're not allowed  
23 to discuss the facts of this case with you. Assume with  
24 me for a moment that you had found somebody guilty of  
25 capital murder, taking the life of two people during the

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1 same criminal transaction. Is there anything about the  
2 way the crime was committed or what led up to the crime  
3 that would be important to you in determining what the  
4 punishment is?

5 A. I honestly couldn't answer that question until  
6 I knew about it. And the only thing I have to recall  
7 from would be the O.J. Simpson case, and we all know  
8 about that. A life is a life. The way a life is taken,  
9 whether it's taken cleanly or uncleanly, the life is  
10 still taken.

11 Q. Right.

12 A. So --

13 Q. Do you see it as pretty much an open and shut  
14 type of situation? If a life is taken, it really  
15 doesn't matter at all how it was taken or under what  
16 circumstances? Once I have found -- once you have found  
17 that a person illegally took a person's life, at that  
18 point are you focused on only one punishment as a proper  
19 response?

20 A. I honestly can't answer that question now.

21 Q. Okay. And that's because?

22 A. And that's because I would have to -- I can't  
23 put myself into a place to where I can say, let's  
24 imagine. It would have to be real to me --

25 Q. I understand.

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1 A. -- and then I could make those decisions.

2 Q. Well, let me ask you this: If your husband had  
3 been on trial for capital murder and had been convicted  
4 by a jury of capital murder, what circumstances do you  
5 think that jury should have heard about him in order to  
6 determine whether he received life or death?

7 A. I think they should hear what kind of person he  
8 was prior to, what kind of person he was during, that  
9 led up to it, and as a result, how this has affected his  
10 life afterwards.

11 Q. Okay. How has it affected -- getting off the  
12 hypothetical, how has forty-five years in the  
13 penitentiary affected your husband?

14 A. Tremendously. He --

15 Q. In what regards?

16 A. He has accepted his responsibility in this. He  
17 has recognized his errors in this. He has come to know  
18 the Lord, most importantly, through there, and given a  
19 chance. He -- whenever -- if he comes out, it's God's  
20 will; but he knows now that life is not in his control.

21 Q. Let me ask you something. I think this raises  
22 an interesting question for me. He has now accepted  
23 what he did --

24 A. Uh-huh.

25 Q. -- right?

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1 A. Uh-huh.

2 Q. And why he's there?

3 A. Uh-huh.

4 Q. Yet, he had a trial. He had a jury trial. He  
5 pled not guilty in that trial, right?

6 A. Uh-huh.

7 Q. When you were sitting there, did you have an  
8 opportunity to sit in the courtroom during the trial or  
9 did you have to wait outside?

10 A. I sat in the courtroom.

11 Q. You heard all the evidence?

12 A. Uh-huh.

13 Q. Was it painfully obvious to you that he was  
14 guilty?

15 A. Yes, sir, it was.

16 Q. How did that make you feel as you sat there, as  
17 his wife? And basically, am I correct in assuming that  
18 prior to you hearing all the evidence, he was telling  
19 you, Hey, I'm not guilty of this? This is --

20 A. Uh-huh.

21 Q. -- not a righteous case against me. How did  
22 that make you feel?

23 A. I was hurt. I was destroyed, really. I was  
24 destroyed. And I actually thought about leaving him a  
25 couple of times, but then I come -- then, because of my

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1 background, there is people in my family that also knew  
2 the Lord. And as a result, they brought me to church;  
3 and I invited God into my life. And God's allowed me  
4 to, first of all, get myself right and recognize that  
5 there is consequences to your actions.

6 And if you choose wrong decisions, then  
7 you're going to have wrong -- bad results. And I told  
8 him this. And throughout the years he's come to  
9 understand, you're responsible for this.

10 Q. Do you think there was still a lot of good in  
11 your husband even though he had to go off to prison for  
12 forty-five years?

13 A. Yes, sir, I do.

14 Q. Do you think that in his situation, maybe he  
15 wasn't willing to own up to things; but after things  
16 became obvious, he was able to put it behind him and  
17 maybe a better person came forward?

18 A. Yes, sir, I do.

19 Q. Do you have any idea when he's eligible for  
20 parole?

21 A. Well, he's supposed to talk to the people in  
22 November. This is his third time.

23 Q. They've set him off?

24 A. They've set him off twice.

25 Q. Let me ask you something; because I want to



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1 make sure if you sit on this jury, you don't have any  
2 misapprehension. Because parole law with regard to  
3 somebody like your husband is totally different. It is  
4 not the same.

5 A. I understand that.

6 Q. And Judge Burdette has explained that. I want  
7 to make sure that if you were on this jury, and let's  
8 assume again that you found somebody guilty of capital  
9 murder, do I have a commitment from you that if you  
10 honestly believed that the circumstances of the crime,  
11 the background of the defendant, whatever he is, even  
12 though you have found him guilty of a very heinous  
13 crime, which capital murder would be, do I have your  
14 commitment that you would not go back to the jury room  
15 and somehow say, well, I know that parole exists; and  
16 even though it's forty years in the future, I'm not  
17 going to even consider life in prison; I'm just going to  
18 go ahead and give the death penalty?

19 A. No, sir, I could never do that. I could never  
20 do that.

21 Q. As I'm sitting here, I'm speaking with a woman  
22 who, you know, has obviously a very responsible job.  
23 Your daughters are doing great. And but for the tragedy  
24 of your husband's predicament, everything seems to be  
25 going pretty well for you, right?

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1 A. Yes, sir.

2 Q. And it gives people the opportunity to kind of  
3 do a self test or a gut check, if you will. And I ask  
4 people, all right, look down inside of you; because only  
5 you know you, the way you are.

6 In twenty minutes I'm not going to know  
7 everything I need to know about it or have any great  
8 insight. So, I ask you to tell me, can you come up with  
9 a couple of reasons -- one reason, even -- why I should  
10 have you on this jury, and then tell me a reason or  
11 reasons why I shouldn't, again, realizing I'm  
12 representing the person that's accused of committing a  
13 very serious crime?

14 A. With everything that I put on the form that I  
15 filled out and what I said, I guess I couldn't answer  
16 that question. I couldn't answer that question. That  
17 would be left up --

18 Q. I'm looking to make sure I don't have somebody  
19 that's going to tell me, well, look, I know somebody  
20 killed a couple of people. And obviously, if I sat on  
21 the jury and I found he killed two people, I would have  
22 found that it wasn't in self-defense. I would have  
23 found it was not an accident. You know, at that point,  
24 kiss it good-bye; because I don't see the point in even  
25 considering life in prison. I think it would have to be

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1 the death penalty for that person under all those  
2 circumstances. Are you that person?

3 A. No, I can't be.

4 Q. Let me just talk for a moment about when your  
5 daughter was working at T.D.C.

6 A. Uh-huh.

7 Q. Did she ever tell you of reprehensible things  
8 that happened to her?

9 A. Yes, she did.

10 Q. Would you share those with us?

11 A. She had worked for the prison system maybe five  
12 or six months. And she came home and she told me they  
13 had put her in the part where they isolate the worst of  
14 the criminals from the rest of the prison population.  
15 And she said one of the inmates had -- one of the  
16 officers was talking to her, and she turned around and a  
17 prisoner was talking to her; and he got angry because  
18 she was listening to her officer. And when she turned  
19 around, he hit her and knocked her out.

20 Q. Did she have to go to the hospital?

21 A. She didn't have to go to the hospital; but when  
22 she came home, her face was swollen.

23 Q. Okay. That must have scared you a great deal.

24 A. It did.

25 Q. So, let me ask you this question: You know

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1 that if you were to give someone a life sentence, the  
2 answer to those questions are going to result in  
3 somebody receiving a life sentence. They're going to be  
4 living in a prison system. They're going to have access  
5 to people. I need you to tell us what, if any, impact  
6 your daughter's situation, her horrible situation, would  
7 have on your ability to evaluate life versus death as a  
8 meaningful punishment for somebody convicted of capital  
9 murder.

10 A. From my understanding and from my personal  
11 feelings in all of this, prison -- if you're in prison,  
12 life has been taken away from you. To lose your  
13 freedom, to me, you have lost a part of your life. And  
14 so, I guess to answer your question, life is still lost  
15 if you're behind prison bar doors. The only difference  
16 is you have breath that you can actually feel and see  
17 things, but life is still lost.

18 Q. Now, some people say -- and, of course, the  
19 major complaint that you hear most often on death  
20 penalty cases for somebody that has received the death  
21 penalty, takes too long to execute them. Do you agree  
22 that executions have sped up? Do you see that process  
23 has become drastically reduced in time?

24 A. Uh-huh.

25 Q. We're probably dealing with cases that have

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1 been in the system a long time, but newer cases people  
2 are coming up much quicker.

3 A. Uh-huh.

4 Q. Do you feel like in some instances having to  
5 serve a life sentence is actually a worse punishment for  
6 somebody than the death penalty? Maybe in the death  
7 penalty, in some respects, it's over with. You go and  
8 meet your maker, and that's about it.

9 A. So, what you're asking me, do I feel life --

10 Q. Do you think in some instances --

11 A. -- is better?

12 Q. No, it's worse that you're actually -- like  
13 you're saying, you're breathing air; but everyday you're  
14 having to think about why you're there, what you did,  
15 what caused you to be there?

16 A. To me, sometimes I do think life in prison  
17 would be worse.

18 Q. My last question to you, and I'm going to sit  
19 down. I'm going to ask you if you have any questions  
20 for me. Do we have an absolute commitment from you --  
21 and this could be very critical -- if you found somebody  
22 guilty of capital murder, you go back in that jury room  
23 and the jury, for whatever reason, is discussing their  
24 answer to these questions and whether or not a  
25 particular defendant would be a threat to society.

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1 to you the other day, what we're doing is talking to  
2 folks individually for the purposes of creating a pool  
3 or a group of about forty-eight folks. We'll have  
4 everybody back here on Wednesday, the 29th.

5 Whoever comes back will have been through  
6 exactly what you've been through. We hope to start at  
7 9:30 in the morning. And if we do get started, then  
8 we'll all be out of here by noon. When we finish that  
9 day, Miss Turner, everybody will leave here knowing  
10 definitely whether they are or are not a juror in the  
11 case.

12 Between now and when we see you next,  
13 don't you alter your life one bit for us. You do your  
14 family things just like you would do them. Do your  
15 professional things just like you would. If you have a  
16 chance to leave town, take the chance and go. All that  
17 we ask of you between now and when we see you next is  
18 this:

19 Please do not talk about this case with  
20 anybody. Please do not permit anybody to talk about it  
21 with you. I don't know whether there will be any news  
22 media treatment about this case or not; but if there is,  
23 avoid it. If there is anything about this case on the  
24 television, refuse to watch it; newspaper, refuse to  
25 read it; radio, refuse to hear it.

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1 And that society, you've now been told,  
2 includes the prison society. Can you absolutely swear  
3 and understand that you would not be permitted and it  
4 would be improper for you to say, well, let me tell you  
5 what happened to my daughter when she was in a prison  
6 system? Do you understand why I would be concerned  
7 about something like that happening? Are you the kind  
8 of person --

9 A. No, sir.

10 Q. -- that would be able to not say anything about  
11 that at all?

12 A. Yes, sir.

13 Q. Even though you might say, boy, I'd like to  
14 tell you something?

15 A. Yes, sir, that has nothing to do with this  
16 case.

17 Q. Okay. Questions of me?

18 A. No.

19 Q. Anything you'd like to know?

20 A. No, sir.

21 Q. Thank you.

22 THE COURT: Thank you, sir.

23 Miss Turner, in just a second I'm going to  
24 excuse you. Before I do, I will tell you we want you  
25 back here two weeks from today. And as I think I said

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1 And the reason for each of those  
2 restrictions, Miss Turner, is for the purpose of  
3 accomplishing the same objective and that's this: If  
4 you do become a juror in the case, the decision that you  
5 reach, whatever it is, must be based exclusively on what  
6 you hear from inside the courtroom, not from any  
7 information you get outside the courtroom. So, that's  
8 why we try to eliminate that, so that it's not a factor.

9 (Venireperson excused for the day.)

10 THOMAS EUGENE SMITH,

11 having been first duly sworn, testified as follows:

12 VOIR DIRE EXAMINATION

13 BY THE COURT:

14 Q. How are you today?

15 A. Doing well, thank you.

16 Q. Please make yourself as comfortable as you can  
17 be. Mr. Smith, first off, let me ask you a couple of  
18 questions. Specifically, I'd you to remember back in  
19 your mind to Monday, when the big group was here, the  
20 things we talked about then. Add to it this morning the  
21 things we talked about this morning. Out of anything  
22 that we've talked about so far, do you have any  
23 questions for me?

24 A. No, sir.

25 Q. Anything, Mr. Smith, that to this point we have

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1 not addressed that you feel is something that would be  
2 worthy of us talking about, because it might have some  
3 influence or some bearing on your service as a juror?

4 A. No, sir.

5 Q. Is there anything at all, sir, whether it might  
6 be something perhaps about your personal life, perhaps  
7 about your work, perhaps about your health, or anything  
8 else for that matter, that you feel in any way would  
9 interfere with your ability to be a juror in this case  
10 during the time frame we've set out?

11 A. No, sir.

12 Q. We try to spend some time this morning,  
13 Mr. Smith, talking about who and making a point that in  
14 a case like this, as in any kind of trial for that  
15 matter, there is no automatic result. The result can't  
16 be automatic, because in every case the evidence is  
17 going to differ.

18 A. Yes, sir.

19 Q. So, that's why in a case like this because --  
20 or not because, but if a jury finds a person guilty of  
21 capital murder, that reason and that reason alone does  
22 not dictate what the answer to these other two questions  
23 should be. Can you see that?

24 A. Yes, sir.

25 Q. Because in some cases the evidence may very

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1 for example, possibly because of their comparative  
2 involvement in the commission of the crime, that they  
3 weren't as bad a person in the commission of a crime.

4 For example, they might have been the  
5 getaway driver, didn't do murder at all. That might  
6 have a bearing on some jurors in some cases. So, can  
7 you see it's not until after everything is over with  
8 that we can project how we're going to answer the  
9 question?

10 A. Yes, sir.

11 Q. And what we're spending some time on now is  
12 making sure that you don't start off with the idea of  
13 thinking or leaning which way you're going to go;  
14 because you can't until you hear the evidence.

15 A. All right.

16 Q. Just absolutely neutral until then. And what  
17 happens after you hear it, that's your call. But  
18 starting out, you have no commitment to anything. Does  
19 that sound like you?

20 A. Yes, sir.

21 Q. Any of these rules that we've talked about that  
22 you find objectionable in any way that you couldn't  
23 follow and enforce if you were a juror?

24 A. No, sir.

25 Q. Do you have any questions before we start?

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1 well be that you think they'll also be a future threat.  
2 The evidence may also very well be in another case that  
3 because of the circumstances, the uniqueness of the  
4 crime, that they're not going to be a future threat.

5 And one of the lawyers has used a story,  
6 about four or five or six years ago, about the woman in  
7 South Carolina named Susan Smith that ran her car off in  
8 the lake, had the two kids in the back, they were both  
9 killed. She claims somebody else. She ultimately was  
10 arrested, charged, tried and convicted of capital murder  
11 and given a life sentence.

12 Maybe the jury's thought was that to  
13 society as a whole, like that question talks about,  
14 she's not a future threat as to her children. She might  
15 be. But can you see how a thought like that might cause  
16 a jury to answer that question yes or no, depending upon  
17 the evidence in the case?

18 A. Yes, sir.

19 Q. Then the Question Number Two has no bearing --  
20 the answer yes, I should say, is not related to how the  
21 first question is answered. You might have somebody in  
22 some imaginary case that you find guilty of capital  
23 murder. You might also have somebody in the same case  
24 that you find would be a future threat to society based  
25 upon the evidence in this case; but you also find that,

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1 A. No, sir.

2 THE COURT: Okay, Mr. McClellan.

3 MR. MCCLELLAN: Thank you, Your Honor.

4 VOIR DIRE EXAMINATION

5 BY MR. MCCLELLAN:

6 Q. Mr. Smith, my name is Lyn McClellan. Along  
7 with Claire Conners, we represent the State of Texas in  
8 this case. I want you to sit back and relax. I'm going  
9 to ask you about some of the stuff in your  
10 questionnaire, talk to you about concepts that may  
11 affect a case like this, and try to get your feelings  
12 about those. You've never been on a jury before; is  
13 that correct?

14 A. That is correct.

15 Q. As a juror, you will be asked to take an oath  
16 to a true verdict render based upon the law and the  
17 evidence. That means if you had some personal opinion  
18 about the way things maybe ought to happen, you have to  
19 set that aside and tell the Court that you'll take an  
20 oath that you would make your decision based on whatever  
21 law the Court gave you and the evidence you heard in the  
22 courtroom. Any reason to believe you cannot do that?

23 A. No, sir.

24 Q. Anything happening in your life that would keep  
25 you from being able to give your full attention to a

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1 case like this?

2 A. I don't see where it would be a factor. I  
3 mean, in every facet I'm going to be thinking about  
4 work; and we're really busy, and I would possibly be  
5 going to work after I got out, you know, on a daily  
6 basis. But, I mean --

7 Q. Only you can answer that question. And I  
8 assume you thought about that process, and that doesn't  
9 cause such a conflict that you think that would keep you  
10 from being able to give your full attention while you're  
11 here?

12 A. That's correct.

13 Q. Now, capital murder is different than murder.  
14 Murder is the intentional taking of another person's  
15 life without any legal justification. By that, I mean  
16 it's not killing someone in self-defense. That's not  
17 murder. It's not killing someone accidentally. That's  
18 not murder. Murder is the intentional taking of another  
19 person's life, okay?

20 A. Yes, sir.

21 Q. Capital -- excuse me. Capital murder then  
22 becomes murder plus some other circumstance; and what we  
23 have alleged in this case is murder during kidnapping  
24 and murder killing two or more people during one  
25 criminal episode are the kinds of cases we've alleged as

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1 like yourself or anybody else that comes down for jury  
2 duty, when they think of murder, they're thinking of  
3 something really, really bad.

4 And, of course, a lot of murders are  
5 really, really bad; but there are lots of fact  
6 situations that fall within that concept of murder that  
7 may make the punishment from one end of the extreme to  
8 the other. So, you don't know whether you do until  
9 you've heard what the facts were. You agree with that?

10 A. Yes, sir.

11 Q. Because not every murder is alike. Not every  
12 capital murder is alike. Now, they'll all have certain  
13 characteristics. Every murder will be an intentional  
14 taking of another person's life. But as the Judge said,  
15 it may be a mercy killing on one end, or it might be a  
16 drive-by shooting of a kid on a bicycle. Those are  
17 vastly different circumstances but the same conduct,  
18 same results.

19 Capital murders, there could be a wide  
20 variation. There could be all kinds of circumstances  
21 there. And so, you have to wait until you hear what all  
22 the facts are, first of all, to know whether or not you  
23 find someone guilty. And if you found someone guilty,  
24 you know, what punishment you would assess, I would  
25 assume, would depend upon the facts that you heard.

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1 capital murder in this case.

2 The Legislature has set out the types of  
3 capital murder; and there is other kinds of cases such  
4 as murder during a robbery, murder during a burglary,  
5 killing a police officer in the line of duty, killing a  
6 child under a certain age. All of these cases are  
7 capital murder, where the death penalty is available.  
8 There is no case in the State of Texas or anywhere else  
9 that I know of where you automatically get death, having  
10 been found guilty of committing a crime, okay?

11 A. Yes, sir.

12 Q. Instead, there is two possible punishments for  
13 capital murder, that being life or death. And a  
14 decision is made by not only consideration of the facts  
15 of the case and the evidence you heard at  
16 guilt/innocence; but when you get to the punishment  
17 stage of a trial, you may now hear additional evidence  
18 about a defendant's character, background, criminal  
19 history, or lack thereof, mental abilities or  
20 disabilities, all kinds of information about the  
21 individual himself.

22 We often bring people in and say, Well,  
23 could you consider the full range of punishment for,  
24 let's say, a murder case? Well, when you do that, when  
25 you ask somebody that just comes from off the street,

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1 Would that be correct?

2 A. Yes, sir.

3 Q. Often, I think, people come in and think, well,  
4 if I found someone guilty of capital murder, that means  
5 he gets death, right? You know it does. You now know  
6 through this system, as the Court has explained to you,  
7 that when you go to the punishment stage of trial, not  
8 only may you hear additional evidence that you hadn't  
9 already heard before, but you're asked to answer the  
10 questions. And the answer to those questions will tell  
11 what the punishment is going to be.

12 And what we're looking for is jurors who  
13 are open and listening to all that evidence before they  
14 decide what the answer to the questions are. And would  
15 you be able to do that?

16 A. I believe so.

17 Q. Okay. Sir, what I'm trying to get at, I guess,  
18 some people may say or may think, well, if I found  
19 someone guilty of capital murder, to put it as bad as I  
20 can put it, that's the intentional taking of another  
21 person's life without any legal justification during the  
22 course of a kidnapping, or during the course of killing  
23 another person, is the way it's alleged in the  
24 indictment. If I find someone guilty, then it goes to  
25 Issue Number One.



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1 And it says, Do you find from the evidence  
2 beyond a reasonable doubt there is a probability that  
3 the defendant would commit criminal acts of violence  
4 that would constitute a continuing threat to society?  
5 Someone might think automatically, well, you know, if I  
6 found he did this one time, there is at least a  
7 probability he would do it again.

8 Now, I suggest to you there is always a  
9 possibility, but that's not the word they use. They use  
10 the word probability, which means more likely than not.  
11 And then they precede that with evidence beyond a  
12 reasonable doubt, which means I have to prove beyond a  
13 reasonable doubt there is a probability that he would  
14 commit criminal acts of violence in the future; or if I  
15 don't, you have to answer that no.

16 So, the automatic answer to that  
17 question -- even though it's an issue that you're asked  
18 to answer after you found someone guilty, the automatic  
19 answer is no, just like the automatic answer on guilt or  
20 innocence. He's not guilty, because he's presumed to be  
21 innocent unless and until we prove to you beyond a  
22 reasonable doubt that he is guilty.

23 The automatic answer to , say, Issue  
24 Number One is no until we prove, if we do, beyond a  
25 reasonable doubt that the answer is yes. Any problem

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1 with that aspect?

2 A. No, sir.

3 Q. Have you ever heard of any cases where someone  
4 was -- read about in the paper or whatever -- that  
5 someone was convicted of capital murder and thought that  
6 was -- and given the death penalty, you thought that was  
7 the improper punishment for the case as you understood  
8 in the paper?

9 A. I don't understand your question.

10 Q. Have you ever learned about a case in the news  
11 or the paper where a person was convicted of capital  
12 murder and given the death penalty; and then you read  
13 about the facts and circumstances of the crime and you  
14 say, That doesn't sound right? That doesn't sound like  
15 the proper punishment? I don't think they should have  
16 got the death penalty for having committed that crime?

17 A. No.

18 Q. Vice versa: Have you ever heard about a case  
19 or a crime where the person did not receive the death  
20 penalty for capital murder, and you thought maybe they  
21 should have?

22 A. Well, I'm sure there is, based on what the  
23 media -- I mean, I can't think of any specific  
24 instances; but I know I've read about things in the  
25 paper and seen them on the news to where, you know, not

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1 just in capital murder, but in other cases to where,  
2 like, how come he's only getting this much, or how come  
3 she's only getting that much? What are the survivors --  
4 I guess you could say, What are they going to be doing  
5 with what's happening to this person? Is that fair?

6 Q. Is it fair to say the questions, from what I've  
7 heard, seem to be putting the evidence on what you've  
8 heard, like, that may not be all there is?

9 A. Well, yes, sir. Media is not going to give you  
10 everything.

11 Q. Right. Do you have any preconceived notion  
12 what the punishment ought to be for someone found guilty  
13 of capital murder?

14 A. Well, I'm pretty much a firm believer of an eye  
15 for an eye. You know, it's kind of conservative  
16 thinking that I believe that if you kill somebody and  
17 it's proven that you've done it and it's malicious, then  
18 it's an eye for an eye, yes, sir.

19 Q. Now, you know the way this system is set up,  
20 it's not --

21 A. Yes, sir, I just learned that.

22 Q. Can you follow that? Can you set aside this  
23 personal belief that you've had before of an eye for an  
24 eye and follow the instructions given to you by the  
25 Court and the evidence that you hear? And, of course,

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1 if that turns out to be an eye for an eye, then maybe  
2 so; but there may be situations where it's not.

3 A. I believe I can follow the rules, and that's  
4 not to say that I might lean one way or another because  
5 of my -- the way I was brought up and everything.  
6 That's the society effect on me, but I believe I can  
7 follow the rules.

8 Q. Now, to follow the rules you'd have to take an  
9 oath to a true verdict render based on the law and the  
10 evidence?

11 A. Yes, sir.

12 Q. So that means that if the evidence was there to  
13 where, let's say, the State on Issue Number One didn't  
14 prove to you beyond a reasonable doubt there is a  
15 probability that the defendant would commit criminal  
16 acts of violence that constitute a continuing threat to  
17 society, but your position and how you've been raised  
18 and how you thought all along is an eye for an eye. And  
19 you obviously know you wouldn't get to those issues  
20 unless you found him guilty of capital murder.

21 But you heard other evidence, and there  
22 wasn't sufficient evidence to prove to you that this is  
23 the type of case where the person would be a continuing  
24 threat to commit future acts of violence. Are you  
25 saying that because of your upbringing and what you

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1 talked about, that you -- that would cause you, then, to  
2 answer that question yes, that there is a probability,  
3 even though the State didn't meet its burden of proof?

4 A. From our conversation that we had on Monday  
5 when we were in here, I put a lot of thought on what  
6 you're talking about; and I've come to the conclusion,  
7 honestly, that if there was a situation, on this first  
8 question, where there is a probability, and you have  
9 proven that -- you've presented your case. And if the  
10 evidence, there is a -- you know, I believe it's kind of  
11 what you might call a gray area in my mind, I would  
12 probably lean towards the yes answer.

13 Q. Does that mean you're not following your oath?

14 A. Not --

15 Q. Your oath is to a true verdict render based on  
16 the law and the evidence.

17 A. Okay. Based on the way I interpret the  
18 evidence that's presented, I would say that if there is  
19 a gray area and I don't know which way to go, as far as  
20 the way I'm thinking, I would probably, if I had to give  
21 an answer, a yes or no answer -- I mean, am I not  
22 answering the right question?

23 Q. No. You're telling us what you think, and  
24 that's fine. What I interpret in my mind, if there is a  
25 gray area that you don't know, that means I haven't met

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1 Q. I'm kind of a firm believer in the facts and  
2 circumstances of the crime go a long way in dictating  
3 what ought to happen, and I leave it up to these twelve  
4 people to make that decision. Now, obviously, they're  
5 going to be very concerned if I got a head start.

6 A. Yes, sir.

7 Q. I need to make sure for all sides that you  
8 don't give me a head start, that you can call it down  
9 the middle; and if there is a gray, whether it be at  
10 guilt/innocence or whether it be Issue Number One, gray  
11 to me means the State ain't there. State's not there.  
12 That doesn't mean just any doubt. But if there is a  
13 reasonable doubt about what occurred, I'm not trying to  
14 box myself in the corner, either; because I can't prove  
15 any case beyond all doubt.

16 A. Right.

17 Q. But if, after you've heard all the evidence, if  
18 you're not comfortable with that decision, you go, well,  
19 I just don't think the State's quite got there, and  
20 you've got to go with not guilty, or you got to go with  
21 no to Issue Number One. You got to feel comfortable  
22 we're there where we're at and not let some opinion -- I  
23 just need to know if you would do that, how you were  
24 brought up. And I respect that, and people can't change  
25 over night.

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1 my burden of proof.

2 A. Okay.

3 Q. Because beyond a reasonable doubt means I've  
4 removed that gray area.

5 A. Okay.

6 Q. And if you're in that gray area where the State  
7 hasn't quite proven it to you beyond a reasonable doubt,  
8 the law would say you give -- the benefit of the tie  
9 goes to the runner, and the runner is over there. Yes,  
10 sir?

11 A. I understand what you're saying.

12 Q. You do. That's what you do. Can you do that?

13 A. Having not been in that situation, I have a  
14 hard time answering that question.

15 Q. I understand, and I know it's hard to think.  
16 Obviously, we're seeking the death penalty. We think  
17 we're going to be able to meet the burden, but the  
18 defense obviously has another idea about this situation.

19 And what we need is jurors who will call  
20 it down the middle. And quite frankly, I don't need  
21 someone to help me over the hump.

22 A. Yes, sir.

23 Q. If I can't get over it by myself, then I don't  
24 think it deserves to be there.

25 A. Yes, sir.

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1 But I guess some people can set aside  
2 their eye for an eye situation and follow the law. And  
3 some people may say, I don't know that I could ever do  
4 that. What do you think.

5 A. I don't know if I could do that or not. I feel  
6 like I'm an honest person, and I would give everything  
7 the benefit of the doubt. But stating it the way that  
8 you've put it, I haven't been in the situation; I don't  
9 know.

10 Q. Okay.

11 MR. MCCLELLAN: I'll pass.

12 MR. HILL: I'd like to make a challenge.

13 THE COURT: Mr. Smith, I'm going to go  
14 ahead and excuse you.

15 All right, Mr. Hill, your challenge is  
16 granted.

17 DONALD NELSON,  
18 having been first duly sworn, testified as follows:

19 VOIR DIRE EXAMINATION

20 BY THE COURT:

21 Q. Mr. Nelson, first off, I'd like to go back to  
22 this past Monday, the things we talked about that day,  
23 and this morning, the things we were talking about this  
24 morning. Out of everything we talked about up to now,  
25 do you have any questions of me?

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1 A. I think you pretty well covered it.

2 Q. Is there anything that, to this point, we have  
3 not yet talked about that you feel as though we should,  
4 because it might have some bearing on your service as a  
5 juror?

6 A. No, other than what we talked about.

7 Q. And I was going to get into that. And  
8 Mr. Nelson, I have related to the lawyers for both sides  
9 exactly what our conversation was.

10 A. Uh-huh.

11 Q. And I told them -- and I don't mean to put  
12 words in your mouth, and I certainly don't mean to put  
13 words in their mouth. But my conclusion with the way  
14 that you and I left our conversation this morning was  
15 this: That we're going to go ahead with today. We're  
16 going to go ahead with September the 29th, when that  
17 comes into play. And on September the 29th, you'll be  
18 armed, hopefully, with more information; and you'll  
19 apprise us on that day if there is anything that, as far  
20 as you feel, would interfere with your service, as we  
21 said, a little bit longer than a week, but not as much  
22 as two?

23 A. Okay.

24 Q. Good. Is that okay with you?

25 A. That's fine. Could I say something?

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1 Q. Surely.

2 A. I'm being totally honest. If it does come up  
3 worse, that I have to take chemotherapy treatments, I  
4 cannot say that I'm going to be here and be totally  
5 focused.

6 Q. Well, if you're here -- I'm sorry.

7 A. Because I have lost two members of the family  
8 from cancer.

9 Q. We understand that, Mr. Nelson. And I'm  
10 thinking that we're going -- you're going to tell us  
11 about that on the 29th?

12 A. Right.

13 Q. If that's the case, we will completely  
14 understand that that's the deal.

15 A. Great, great.

16 Q. But we're just trying to buy some time until  
17 you're armed with enough information to be able to know  
18 what your situation is.

19 A. Sure.

20 Q. It's just kind of like the trial. We're not  
21 trying to buy some time, but we can't make any decisions  
22 about the trial till we've heard what the evidence is.

23 A. Sure, I understand.

24 Q. But please, we are not insensitive to your  
25 situation.

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1 A. Oh, I understand; but at the same time, I'll  
2 make my feelings known.

3 Q. Absolutely. I guess, Mr. Nelson, what I'm  
4 trying to spend some time doing today and any other days  
5 is to point out that during the course of a trial, there  
6 is no automatic conclusion. And there is never an  
7 automatic conclusion; because the conclusion would  
8 depend upon the evidence, the believability of it, as  
9 well as what the testimony was.

10 Can you see from our conversation this  
11 morning how the three decisions that the jury makes --  
12 whether a person is guilty or not, answer to Question  
13 One, answer to Question Two -- those decisions must all  
14 be made based upon evaluation of evidence that comes  
15 from a common pot, so to speak, but that each question  
16 that you're being asked to resolve asks you to look at  
17 that evidence in a little bit different language.  
18 That's why the answer to one of those decisions, in and  
19 of itself, does not direct you as to how the next answer  
20 should be; because the question is remarkably different.

21 A. Right.

22 Q. For example, is somebody guilty or not guilty?  
23 Well, if they're guilty, that's the deal; but just  
24 because they're guilty, that doesn't necessarily mean  
25 they're going to probably commit future acts of violence

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1 and be a threat to society. And it may very well be,  
2 based upon the uniqueness of the testimony in one case,  
3 that you're perfectly satisfied that the conduct was an  
4 absolute aberration compared to the way the human being  
5 lived the rest of his life.

6 Might very well be, however, if you did  
7 answer that first question yes, you might look back  
8 through all the evidence and determine, but there is a  
9 mitigating circumstance that makes me think a life  
10 sentence is more appropriate. May very well be in some  
11 given case. May very well be that because of the nature  
12 of the crime committed, maybe the victim in the crime,  
13 who certainly should not have been killed, wasn't  
14 completely innocent his own self. That might be a  
15 situation that might cause you to be influenced into  
16 thinking a life sentence.

17 But the point is not to try to commit you  
18 to an example, but to commit you to the notion that you  
19 would never make a conclusion as to what the answer  
20 would be to any of these questions until after you've  
21 heard all the evidence.

22 A. Sure.

23 Q. Before we begin, do you have any questions of  
24 me?

25 A. No, sir.

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1 Q. Thank you.

2 THE COURT: Mr. McClellan.

3 MR. MCCLELLAN: Thank you, Your Honor.

4 VOIR DIRE EXAMINATION

5 BY MR. MCCLELLAN:

6 Q. Mr. Nelson, my name is Lyn McClellan. Along  
7 with Claire Conners, we represent the State of Texas in  
8 this case. I want to just kind of go over your  
9 questionnaire some and follow up some questions on  
10 that --

11 A. Sure.

12 Q. -- and then talk to you about certain aspects  
13 of the law. You indicated that you're retired. What  
14 did you do before you retired?

15 A. I worked for Kraft Foods as a salesman for  
16 twenty-six years.

17 Q. You indicated that you consider yourself  
18 liberal. Why do you consider yourself liberal?

19 A. Let me think about that for just a minute. I  
20 believe in rights.

21 Q. Okay.

22 A. Some people might be a stickler to a certain  
23 thing. I'm open to different ideas.

24 Q. Okay. All right. You also participate in  
25 Citizens on Patrol, I guess in your neighborhood?

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1 A. Just west -- down like 11th and TC Jester.

2 Q. Yes.

3 A. We're east of the White Oak Bayou.

4 Q. Have y'all -- you, personally -- have you  
5 encountered any type of crimes going on during the  
6 period of time you patrol?

7 A. No.

8 Q. How long has this been in operation in the  
9 subdivision?

10 A. Since 1991.

11 Q. Long time. You indicate -- let me just ask  
12 you, what is your opinion about the death penalty, kind  
13 of in your own words?

14 A. I believe in it as a means to deter crime.

15 Q. Did you always believe that?

16 A. No. As I've gotten older -- as I was younger,  
17 I was doubtful about it.

18 Q. All right. Okay. You checked on the -- this  
19 list of -- there is fifty-two groups of five. And you  
20 checked the first one that says, I'm in favor of the  
21 death penalty, except in a few cases where it may be  
22 inappropriate. Okay.

23 A. What I was thinking of is where there wasn't  
24 just, you know, enough evidence.

25 Q. Okay.

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1 A. Yes.

2 Q. That's kind of a neighborhood watch-type?

3 A. It's a volunteer.

4 Q. How long have you been doing that?

5 A. I started the latter part of May.

6 Q. Okay. And how often do you patrol?

7 A. I put in anywhere from two to four hours a  
8 week. I have a weekend place in Livingston, so I spend  
9 fifty percent of the time back and forth. I have more  
10 time in Houston. I spend more time, but at least two  
11 hours a month. So it could run as much as four or six  
12 hours a month.

13 Q. And y'all just patrol certain hours or  
14 something, or how do you do that?

15 A. Each person picks a certain time, certain day.  
16 My particular time, I patrol Sundays, usually from about  
17 12:00 to 1:00 or 1:30.

18 Q. At night or during the day?

19 A. During the day.

20 Q. Okay.

21 A. We do have some that patrol at night. People  
22 that work during the day, they do patrol at night.

23 Q. What subdivision do you live in?

24 A. Timbergrove.

25 Q. What part of the town is that?

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1 A. I would have to be convinced 100 percent.

2 Q. Now 100 percent causes me some concern.

3 A. Well, I say a hundred. Best of my ability as a  
4 juror.

5 Q. I think that's what most people mean. I could  
6 never prove anybody guilty a hundred percent, unless you  
7 were a witness to the case. And if you're a witness,  
8 you couldn't be a juror.

9 A. True.

10 Q. The law requires beyond a reasonable doubt,  
11 which you'll be given. Anything about that?

12 A. Just strike the hundred percent. To the best  
13 of my ability.

14 Q. The next area said, There are some kinds of  
15 cases which I know I could not vote for the death  
16 penalty even if the law allowed me to, but others in  
17 which I would be willing to consider voting for it. Can  
18 you tell me what you were thinking about in that regard?

19 A. Repeat that again.

20 Q. There are some crimes, some kinds of cases  
21 which I know I could not vote for the death penalty even  
22 if the law allowed me to, but others in which I would be  
23 willing to consider voting for the death penalty.

24 A. It might BE something where it might be  
25 questionable. It might be a case of self-defense.



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1 Q. All right. So, basically what was  
2 questionable, if that person actually committed the  
3 crime. Of course, that will be resolved at the  
4 guilt/innocence stage of the trial. If you have a  
5 question about whether or not they committed the crime,  
6 that means you've got a reasonable doubt about it. If  
7 you have a reasonable doubt as to whether or not they're  
8 guilty of capital murder, you find them not guilty.

9 A. Right.

10 Q. So we never get to the punishment stage of the  
11 trial then.

12 A. Right.

13 Q. So, that would not be a case in which the law  
14 would allow you to give the death penalty; because you  
15 would never get to the punishment stage, because you  
16 wouldn't have ever found someone guilty.

17 A. True.

18 Q. Same thing with self-defense.

19 A. True.

20 Q. Capital murder is murder plus some other  
21 circumstance. What we've alleged in this case is murder  
22 during kidnapping, and also a second paragraph, murder  
23 of two or more people during one criminal episode.  
24 Murder is the intentional taking of another person's  
25 life without any legal justification. By that I mean,

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1 not in self-defense, not an accident, but where they  
2 intend to kill somebody and do so. And then a capital  
3 is during the course of a kidnapping or during the  
4 course of killing two or more people during one criminal  
5 episode. Are those the kinds of cases, where there is  
6 an intentional taking of someone's life during the  
7 commission of another felony offense, you think the  
8 death penalty should be available?

9 A. Yes, sir.

10 Q. Some people come to us and say they are in  
11 favor of the death penalty; but they do not believe that  
12 they, themselves, could ever participate in a process --  
13 some people say that they believe in the death penalty;  
14 but they don't believe that they, themselves, can ever  
15 participate in a process by where they would be called  
16 upon to make decisions that would result in this Judge  
17 ordering the execution of the defendant sitting over  
18 here on trial.

19 A. Uh-huh.

20 Q. Do you have any doubts about your ability to  
21 participate in that type process or make that type of  
22 decision if that's what the law and the evidence called  
23 for?

24 A. No problem.

25 Q. And the last -- next to the last page there was

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1 a list of agree/disagree; and either you got tired of  
2 reading them, or you only answered one of them?

3 A. Well, Friday was a very bad day for me. It was  
4 my off day. If you'd like, I'll go over it more and  
5 I'll try to --

6 Q. Why don't we --

7 MR. MCCLELLAN: Can you just show him that  
8 questionnaire, Judge?

9 Q. (BY MR. MCCLELLAN) Let's kind of go down  
10 through these. The death penalty has never been  
11 effective in preventing any crime. Do you agree or --

12 A. I disagree.

13 Q. The death penalty is absolutely justified?

14 A. What page are you on?

15 Q. Number 14. I'm sorry. The next to the last  
16 page.

17 A. Okay. All right. Got it.

18 Q. The first one you checked. The second one you  
19 say you disagree, that the death penalty has never been  
20 effective. Number 3 says, The death penalty is  
21 absolutely justified?

22 A. I'll agree.

23 Q. Any person, man or woman, young or old, who's  
24 guilty of capital murder should pay with their own  
25 lives.

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1 A. I'd have to disagree with that.

2 Q. We must have the death penalty for some crimes?

3 A. Yes.

4 Q. Don't believe in the death penalty under any  
5 circumstances?

6 A. No, disagree.

7 Q. Death penalty is not necessary in modern  
8 civilization?

9 A. Disagree.

10 Q. Life imprisonment is more effective than the  
11 death penalty?

12 A. Disagree.

13 Q. The execution of criminals is a disgrace to a  
14 civilized society?

15 A. Disagree.

16 Q. Death penalty is just and necessary?

17 A. Agree.

18 Q. I do not believe in the death penalty; however,  
19 I do not believe it should be abolished?

20 A. Disagree.

21 Q. The death penalty gives the criminal what he  
22 deserves, as applied to that?

23 A. Yes.

24 Q. It doesn't make any difference to me whether or  
25 not we have the death penalty?

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1 A. Disagree.

2 Q. Death penalty is always justified for  
3 intentional murder?

4 A. Agree.

5 Q. The death penalty should be available for -- as  
6 punishment for more crimes than it is now?

7 A. Disagree. That one could be --

8 Q. Could go either way?

9 A. Either way, yeah.

10 Q. Prison makes convicted people worse?

11 A. I lean towards disagree.

12 Q. And prison rehabilitates people convicted of  
13 crime?

14 A. Hopefully, I agree.

15 Q. What we're looking for and what happens is that  
16 jurors are going to be asked to take an oath to a true  
17 verdict render based on the law the Court gives them and  
18 the evidence they hear from the witness stand. Okay.  
19 Those two factors go into making your decision what the  
20 law is and what the evidence is, which means you have to  
21 set aside any personal opinions and beliefs if you're  
22 going to follow the law and the evidence.

23 Some people come in here and say, I  
24 believe if you told me -- you tell me someone's guilty  
25 of capital murder, and I'm going tell you the death

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1 penalty ought to apply. But, of course, our system is  
2 set up to where you get additional evidence and look at  
3 other things; and you're asked to answer questions.  
4 You're asked to go back over it again and make sure and  
5 reevaluate things and look at all the evidence before  
6 you make up your mind, not only about the crime, but  
7 also about the individual himself.

8 Do you believe in your mind that there  
9 was -- ought to be, if you've found someone guilty of  
10 capital murder, that ought to pretty well settle the  
11 issue? And if you're guilty of capital murder, you  
12 ought to automatically get the death penalty.

13 A. Not necessarily.

14 Q. Do you understand that basically, I guess, if  
15 there is an automatic answer on punishment, it is that  
16 they get life? Because Issue Number One says the burden  
17 of proof is on us to prove there is a probability that  
18 he will commit criminal acts of violence that would be a  
19 continuing threat to society.

20 Since the burden of proof is on us, if we  
21 fail to prove the answer's yes, the answer would be no;  
22 and they would get life. Just like at guilt/innocence,  
23 it is burden of proof on us. He has the presumption of  
24 innocence. He's presumed to be innocent until and  
25 unless we prove he's guilty beyond a reasonable doubt.

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1 The same way the presumption is he's not guilty, and we  
2 have to prove that he is. Otherwise, we don't get  
3 there. And if you found someone guilty, the presumption  
4 is, on Number One the answer is no; because we have the  
5 burden of proof, unless and until we prove to a  
6 probability that the person would commit criminal acts  
7 of violence that would constitute a continuing threat to  
8 society. Any problem with that aspect of the law?

9 A. No.

10 Q. Understand in making that decision on Number  
11 One about whether or not someone would be a continuing  
12 threat to society, you can use the facts of the case  
13 that you found him guilty of capital murder on. Maybe  
14 those facts are so horrendous by themselves that they  
15 convince you by themselves, without anything else, that  
16 a person is a continuing threat.

17 On the other extreme, maybe they're not.  
18 Maybe it's a Boyscout, choirboy, straight A student,  
19 never been in trouble with the law before, did a capital  
20 murder. I'm not taking that away; but this is like  
21 total aberration from the rest of their personality, the  
22 rest of their life. And that type of person -- you may  
23 think, I don't know if that person will be a continuing  
24 threat; because this was just a total aberration because  
25 of the circumstances of the crime. He's still guilty of

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1 capital murder. Issue Number One never undoes that.  
2 Doesn't unravel that. That just determines whether he  
3 gets life or death.

4 A. True.

5 Q. And can you see sometimes that maybe a life  
6 sentence is appropriate?

7 A. Yes.

8 Q. I'm of the opinion that if I were to ask you or  
9 anyone else who found someone guilty of capital murder,  
10 can you tell me what the punishment was going to be,  
11 knowing the way the system was set up, they would not be  
12 able to tell me that, what the punishment was going to  
13 be; because they haven't heard all the evidence that  
14 they need to hear.

15 Are you of that feeling, or do you think  
16 once you found someone guilty of capital murder,  
17 school's out.

18 A. I have to hear the whole thing, their  
19 background and what they might do in the future. I'd  
20 have to have the whole picture.

21 Q. And you think that's important in making these  
22 decisions?

23 A. Of course.

24 Q. Now another problem you arrive at is, let's say  
25 you get to Issue Number Two, which means you've already

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1 found a person guilty of a capital murder, intentionally  
2 took the life of a person during the kidnapping or  
3 killed two or more people during one criminal episode.  
4 The answer to Number One is yes.

5 In other words, if you had evidence  
6 sufficient to prove to you beyond a reasonable doubt  
7 there is a probability that the person on trial would  
8 commit criminal acts of violence that would be a  
9 continuing threat to society, so you found him guilty,  
10 and you also think he would be a continuing threat,  
11 Issue Number Two now asks you to stop and reevaluate  
12 everything you've heard so far. And do you find there  
13 is sufficient reason or reasons, what they call  
14 mitigating circumstances, that would give you a reason  
15 to give the person life as opposed to death?

16 It asks you to go back and reevaluate  
17 everything you've heard so far to make sure you've  
18 reached the decisions you want to reach, and if you find  
19 there are reasons, to change your vote from death to  
20 life. If you don't find there is a reason to change  
21 your vote and leave it like it was, then he receives the  
22 death penalty. Any problem with that aspect?

23 A. No.

24 Q. Okay. That exhaling there, what were you  
25 thinking? Anything going through your mind there about

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1 A. Some cases I might have -- I'd have to think  
2 about it a long time.

3 Q. What do you mean? Are you saying in cases you  
4 might have a problem giving the death penalty, or some  
5 cases maybe?

6 A. Making the right decision.

7 Q. Okay. Does that increase my burden of proof,  
8 do you think?

9 A. Pardon?

10 Q. Does that increase my burden of proof? Do I  
11 have to make you more sure --

12 A. Huh-uh.

13 Q. -- than I would someone else?

14 A. Uh-huh.

15 Q. Now, you know the burden of proof is beyond a  
16 reasonable doubt.

17 A. Okay, okay.

18 Q. But are you comfortable with that?

19 The law says the burden of proof is beyond  
20 a reasonable doubt. You can say, well, that's fine what  
21 the laws says; but you need to convince me, Mr.  
22 McClellan. You're going to have to give me  
23 ninety-nine --

24 A. Beyond -- I would in that case.

25 Q. Okay. You're saying because the death penalty

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1 that?

2 A. Again, I would want to go back to what we  
3 covered before, before I made that second decision.

4 Q. Right.

5 A. And to me, I would have to be, you know, as  
6 close as possible, sure, before I made that decision.

7 Q. Right. Okay. You know the State of Texas is  
8 seeking the death penalty in this case. We're going to  
9 be asking a jury to find the defendant guilty of capital  
10 murder.

11 We're going to be asking you to answer  
12 Issue Number One yes and Issue Number Two no, which  
13 means the death penalty would be imposed. Okay?

14 A. Right.

15 Q. Is there anything I need to know about you, in  
16 determining whether or not you ought to be a juror, that  
17 would affect your ability to make those type of  
18 decisions if that's what the law and the evidence called  
19 for?

20 Somebody could be sitting up there and  
21 saying, Mr. McClellan, you know, some other type of  
22 juror, I might be a pretty good juror for you on this;  
23 but you've got your work cut out for you with me on this  
24 case. Or somebody could say, Hey, I can listen to the  
25 evidence and call it like I see it.

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1 is a potential punishment, you think you would hold me  
2 to a higher burden of proof than just beyond a  
3 reasonable doubt?

4 A. I think beyond a reasonable doubt would get it.

5 Q. Would get it. Okay.

6 A. Yeah.

7 Q. All right. Thank you, sir. I appreciate your  
8 time, and I'll pass you.

9 THE COURT: Mr. Hill.

10 VOIR DIRE EXAMINATION

11 BY MR. HILL:

12 Q. Hi, Mr. Nelson. How are you doing today?

13 A. Fine.

14 Q. I'm only going to ask you a few questions. I  
15 know you've been here several days and having to go  
16 through quite a bit right now. That probably kind of  
17 preoccupies your time, so I just want to ask you a few  
18 questions and we'll let you get out of here.

19 Put you in a position where you're  
20 governor of the State of Texas right now, and you have  
21 the authority to change the law. Okay. And the two  
22 options that you have are as follows: For people  
23 convicted of capital murder, the automatic sentence  
24 shall be life. Or, for people convicted of capital  
25 murder, the automatic sentence shall be death. Which

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1 would you choose, if you can?

2 A. Okay. This is all hypothetical?

3 Q. Sure.

4 A. One way or the other?

5 Q. Right.

6 A. I'd go with life.

7 Q. Now, I found one of the questions, one of the  
8 answers was kind of interesting; and I wanted to follow  
9 up if I could. One of the questions asked you whether  
10 or not, would a person's -- an individual's use or sale  
11 of drugs prevent them from relying on any defense  
12 available to other members of society? And you  
13 answered, Yes. And then you said, People might not be  
14 impartial.

15 A. Repeat that a little bit again.

16 Q. Page ten. See Question Number 46 there?

17 A. Yes.

18 Q. Okay. I just wanted to understand the answer.  
19 You said, Yes, people might not be impartial.

20 A. No, no. If I'm reading that right, they sell  
21 drugs; and they're not able to have a defense, as far as  
22 trial, or something like that.

23 Q. Yeah. The question was not worded very well.  
24 I think if -- I can paraphrase, let me ask this  
25 question.

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1 A. That would be a definite no.

2 Q. In other words, if a person is charged with one  
3 crime -- say a person is charged with murder, and there  
4 was other evidence to suggest that person had used drugs  
5 in the past and they were dealing drugs. Would that  
6 prevent that person from relying upon a defense to the  
7 murder allegation?

8 In other words, you're not saying because  
9 I use drugs, I'm not guilty. If a person were trying to  
10 rely upon self-defense, or accident, or any other  
11 identifiable defense, would the fact that you had heard  
12 evidence that the person may have been a drug user  
13 prevent them from relying upon that other defense?

14 A. One more time. I'm sorry, I am.

15 Q. If you're sitting as juror in a case, and let's  
16 say it's a murder case.

17 A. Okay.

18 Q. Person is charged with intentionally taking the  
19 life of someone. And you hear evidence that that person  
20 on trial uses drugs, or is a drug dealer. Would that  
21 cause you to say, well, because of that, I'm not going  
22 to give him the benefit of any issue regarding  
23 self-defense?

24 A. No.

25 Q. One has nothing to do with the other?

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1 A. No. I hadn't heard the information, no.

2 Q. Tell me what it was like growing up in Roswell.  
3 That's where you grew up, you said, twenty-seven years?

4 A. Right. I grew up in the '60s. Times have  
5 changed.

6 THE COURT: The little men had already  
7 left.

8 VENIREPERSON: The town was basically  
9 about 35,000. They had an Air Force base there. It was  
10 a good size town. I had a hard time, due to the fact  
11 that my dad -- I had to help support my family, really;  
12 because my dad was ill.

13 So, looking back, some of my high school  
14 wasn't the greatest in the world; but my junior high and  
15 early parts of high school I enjoyed. It was an era. I  
16 had a lot of people I thought a lot about. John F.  
17 Kennedy was one. I thought he was a great man, and I  
18 think -- his address he had when he was elected, what  
19 were his words exactly? He said, Think not what your  
20 country can do for you, but what you can do for your  
21 country. That was inspiring to me, and I think that --  
22 it might sound corny; but I think today if we could  
23 think in terms of that philosophy, we would be a lot  
24 better off.

25 Martin Luther King, I thought he was a

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1 great man. I worked on civil rights and had a concept  
2 of nonviolence. And he gave the ultimate, his life.  
3 Franklin Roosevelt, I thought he was great. He got us  
4 through the war and through the depression, but I moved  
5 to Roswell in the late '60s, about '64. I went to night  
6 school there; and I went to college full-time for one  
7 semester, dropped out, and then I moved to Houston  
8 because of better employment opportunities.

9 Q. Okay.

10 A. And I worked for NASA for two years and then  
11 went to work for Kraft.

12 Q. You were with that employer for twenty-six  
13 years?

14 A. Right.

15 Q. Okay. What do you do in your spare time? I  
16 know you do the Citizens on Patrol. What other things?

17 A. I walk. I walk five times a week, about  
18 forty-five minutes per day. I quit smoking, so that  
19 helps me when I quit smoking. It's a good habit. Makes  
20 me feel a lot better. I like to read a lot, so I was  
21 lucky enough, I didn't have to enlist -- I wasn't  
22 drafted for Vietnam. I read a lot about Vietnam because  
23 of my period of time growing up, and I like to read a  
24 lot. Walking. I do boating, do a little fishing if  
25 it's not too hot. I like to be comfortable when I fish.



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1 Q. Okay. Is there anything you'd like to ask us  
2 from the defense side of the table over here?

3 A. Nothing I can think of right now.

4 Q. If I were sitting here and I'm having to pick  
5 you right now, not coming back in a few weeks, is there  
6 anything you could tell me to convince me I shouldn't  
7 pick you as a juror?

8 A. I would give it my best shot.

9 Q. Fair enough.

10 A. That's all any of us can do.

11 THE COURT: Mr. Nelson, in just a second  
12 I'm going to excuse you. Before I do, I'll tell you  
13 we'll want you back here Wednesday, the 29th of  
14 September, which is two weeks from today. What we'll do  
15 is, we're talking to folks individually for the purposes  
16 of creating a pool of roughly forty-eight people. Every  
17 single one of them will have been through exactly what  
18 you've been through; and we'll have everybody back here  
19 on Wednesday, the 29th.

20 Between now and -- oh, and if we can get  
21 started on time that day -- and that would be 9:30 --  
22 everybody would be out of here by noon on that day.  
23 Everybody will leave here knowing for certain whether  
24 they are or are not a juror in the case. And we  
25 recognize you still have some variables out there.

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1 VENIREPERSON: But if worse comes to  
2 worst, in my case, would it be a problem as far as  
3 getting dismissed from the jury?

4 THE COURT: You just tell us that day,  
5 because we're going to be relying on you.

6 VENIREPERSON: Good deal.

7 THE COURT: And we're all anticipating  
8 good news, by the way. Between now and when we see you  
9 again, don't you alter your life one bit for us. Do the  
10 things you ordinarily do, and do them exactly the same  
11 way. All we ask is, don't talk about the case with  
12 anybody. Don't let anybody talk to you. I don't know  
13 if there is going to be any news media treatment about  
14 the case between now and when we get going; but if there  
15 is, avoid it. If there is anything about the case on  
16 the television, refuse to watch it; newspaper, refuse to  
17 read it.

18 Now each those restrictions is for the  
19 point of trying to accomplish the same objective, and  
20 that's this: If you do become a juror in the case, the  
21 decision that you do reach, whatever it is, that's got  
22 to be based exclusively upon the information you  
23 received; and your decision can in no way be influenced  
24 or affected by anything you hear outside. So, that's  
25 why we try to do that.

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1 (Juror excused.)

2 DOUGLAS POLEGA,

3 having been first duly sworn, testified as follows:

4 VOIR DIRE EXAMINATION

5 BY THE COURT:

6 Q. How are you today?

7 A. Good.

8 Q. Good. Is it Polega? Mr. Polega, I'd ask you  
9 to remember back to Monday when the big group was here,  
10 the things we were talking about on that day, add to it  
11 this morning the things we talked about this morning.  
12 And out of everything we have talked about so far, do  
13 you have any questions at all for me?

14 A. No.

15 Q. Is there anything to this point that we have  
16 not yet talked about that you feel as though we should  
17 address, because it might have some bearing on your  
18 service as a juror in this case?

19 A. No.

20 Q. Is there anything at all, sir, that you can  
21 think about, whether it be something perhaps about your  
22 personal life, something perhaps about your job,  
23 something perhaps about your health, or maybe even  
24 something related to something else that you think in  
25 any way could interfere with your ability to be a juror

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1 in this case during the time we talked about?

2 A. Possibly my job.

3 Q. Let's talk about that.

4 A. I just started about two months ago, and we're  
5 coming up on the Year 2,000 problems.

6 Q. I thought we didn't have any of those.

7 A. We do. But we have a company. We have a  
8 company-wide deadline of October 16th to have all that  
9 resolved, and I play -- not a key part, but I do play a  
10 part in that. And if I were not able to participate in  
11 that, that would not really look very good for me, as an  
12 employee.

13 THE COURT: Guys, tell me what I'm  
14 supposed to do.

15 MR. HILL: You might want to delve in.

16 THE COURT: I recognize that, but I was  
17 looking for an easy way out.

18 MR. MCCLELLAN: There are no easy ways.

19 THE COURT: Nor are there any free  
20 lunches, either.

21 Q. (BY THE COURT) Here's what I think. You know,  
22 there is a chance that we might get together back again  
23 on the 29th of September. I have no idea what's going  
24 to happen on that day in terms of what's going to happen  
25 to you, whether you are a juror or not. And these

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1 lawyers, right now, they couldn't answer that question  
2 for you, either; because normally we visit with you with  
3 all the other people.

4 But my question to you is this: If you  
5 were a juror, we would start the evidence on the 4th of  
6 October; so, that gives you two-and-a-half weeks right  
7 there. The people know that you're here, don't they?

8 A. Yes.

9 Q. They know not what the case is about, but they  
10 know the seriousness of the case; so, they're armed with  
11 information?

12 MR. MCCLELLAN: Judge, we resolved your  
13 problem.

14 THE COURT: Thank you very much. You're  
15 excused.

16 If I'm understanding correctly, there is  
17 an agreement by and between the parties that  
18 Venireperson Number 62, that being Mr. Eric Garcia, as  
19 well as Venireperson Number 56, that being Mr. Douglas  
20 Polega, who's being excused by agreement of all  
21 concerned. Each may be excused.

22 Mr. McClellan, is that your agreement?

23 MR. MCCLELLAN: Yes, Your Honor.

24 THE COURT: Miss Connors?

25 MS. CONNORS: Yes, sir, Your Honor.

1 THE STATE OF TEXAS )

2 COUNTY OF HARRIS )

3 I, Pamela Kay Knobloch, Official/Deputy  
4 Official Court Reporter in and for the 179th District  
5 Court of Harris County, State of Texas, do hereby certify  
6 that the above and foregoing contains a true and correct  
7 transcription of all portions of evidence and other  
8 proceedings requested in writing by counsel for the  
9 parties to be included in this volume of the Reporter's  
10 Record, in the above-styled and numbered cause, all of  
11 which occurred in open court or in chambers and were  
12 reported by me.

13 I further certify that this Reporter's Record  
14 of the proceedings truly and correctly reflects the  
15 exhibits, if any, admitted by the respective parties.

16 I further certify that the total cost for the  
17 preparation of this Reporter's Record is \$\_\_\_\_\_ and  
18 was paid by Harris County.

19 WITNESS MY OFFICIAL HAND this the \_\_\_\_\_ day of  
20 \_\_\_\_\_, 2000.

21  
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26 Pamela Kay Knobloch, Texas CSR No. 1650  
27 Expiration date: 12/31/2000  
28 Official Court Reporter, 179th District Court  
29 Harris County, Texas  
30 301 San Jacinto  
31 Houston, Texas 77002  
32 713.755.6340

33 APPELLANT: CHARLES MAMOU, JR.  
34 CAUSE NO. 800112

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1 THE COURT: Mr. Hill, is that your  
2 agreement?

3 MR. HILL: Yes, sir, Your Honor.

4 THE COURT: Mr. Wentz, is that your  
5 agreement?

6 MR. WENTZ: Yes, sir, Your Honor.

7 THE COURT: And yours, Mr. Mamou?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: Is it your request he be  
10 excused?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: Very well.

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## REPORTER'S RECORD

VOLUME 9 OF 25 VOLUMES

TRIAL COURT CAUSE NO. 800112

CHARLES MAMOU, JR. ) IN THE DISTRICT COURT

Appellant )

)

VS. ) HARRIS COUNTY, TEXAS

)

THE STATE OF TEXAS )

Appellee ) 179TH JUDICIAL DISTRICT

\*\*\*\*\*

## VOIR DIRE EXAMINATION

\*\*\*\*\*

On the 16th day of September, 1999, the following proceedings came on to be heard in the above-entitled and numbered cause before the Honorable Bob Burdette, Judge Presiding, held in Houston, Harris County, Texas:

Proceedings reported by computer aided transcription/stenograph machine.

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3

1 THE COURT: As I understand, there is an  
2 agreement by and between the parties Venireperson Number  
3 69, Margarita Byrum, and Venireperson Number 74, Miss  
4 Anna Haydock, by the agreement of all concerned, may be  
5 excused.

6 MR. McClellan, is that your agreement?

7 MR. MCCLELLAN: Yes, Your Honor.

8 THE COURT: Is it Miss Connors' agreement,  
9 too?

10 MR. MCCLELLAN: Yes, Your Honor.

11 THE COURT: Mr. Hill, your agreement?

12 MR. HILL: Yes, sir.

13 THE COURT: Is it Mr. Wentz'.

14 MR. HILL: Yes, sir.

15 THE COURT: Is it your agreement, also?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: Is it your request?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Your requested is granted.

20 (Venire panel brought in and seated.)

21 THE COURT: Good morning, ladies and  
22 gentlemen. To remind you, we've asked you here so we  
23 might visit with you about your prospective service as a  
24 juror in the case of the State of Texas versus Charles  
25 Mamou. The defendant over here is represented by his

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1 of the witnesses, extract from all the testimony the  
2 believable portions of that testimony, and apply the law  
3 that is raised by the believable portions of the  
4 testimony. That's a comparative job.

5 Before we begin our individual  
6 conversation today, I want to spend a couple of minutes  
7 talking with you a little bit more in detail about some  
8 of the rules that can come into play during the course  
9 of a trial like this. Before we start, let me tell you  
10 that I know we're going to be talking about stuff you  
11 have never thought about before in your whole life; and  
12 there simply was never any reason for you to. Please, I  
13 know it's going to be different to you, but don't get  
14 frustrated with it. Don't get frustrated with me,  
15 because we're going over a lot of material and it's  
16 somewhat specific. Please don't feel you have to  
17 memorize what it is I'm telling you, because you don't  
18 have to get frustrated with me and you don't have to  
19 memorize it; because if these rules we're going to be  
20 talking about this morning do come into play, they're  
21 all going to be in writing. They're all going to be in  
22 the Court's charge, and you're going to have it before  
23 you at all times during the whole time you're out  
24 deliberating. So it's not necessary for you to try to  
25 commit to memory what it is we're talking about. I just

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1 attorneys, Mr. Wayne Hill, Mr. Kurt Wentz, who will be  
2 with us in just a second.

3 The State of Texas is represented by two  
4 of her Assistant District Attorneys, Mr. Lyn McClellan,  
5 who is present now, and Miss Claire Connors, who will be  
6 along in a couple of moments. We talked the other day  
7 about the fact this defendant stands charged by  
8 indictment with the offense of capital murder that's  
9 alleged to have occurred in Harris County, Texas, on or  
10 about December 7th, 1998. We spent a good deal of time  
11 the other day talking about some of the rules that can  
12 come into play during the course of a trial such as  
13 this. We talked about the fact that your job, as  
14 jurors, is to gauge and judge and evaluate the  
15 credibility of the witnesses and the weight you want to  
16 give their testimony.

17 My job, on the other hand, has nothing to  
18 do with that. My job -- what my job has to do with is  
19 to listen to what the witnesses say. Whether I believe  
20 them or not makes absolutely no difference, and you'll  
21 never know. But whatever they say, my job is to arm you  
22 with the law that is raised by the testimony that they  
23 give, and I'll give you that law in the Court's charge.  
24 And you'll take that law, that being those rules that  
25 are raised by the testimony, and evaluate the testimony

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1 want to give you an idea about what can occur. Whether  
2 it does or doesn't, as I said earlier, will depend upon  
3 the testimony.

4 We're going to spend some time talking  
5 today about the second phase or the punishment phase of  
6 a capital murder trial. You might say to yourselves,  
7 well, why in the world would you talk about the second  
8 phase of the trial when the first phase hasn't even  
9 started yet? And that's a good question. The answer  
10 to that question is perfectly simple. This is the only  
11 time we're ever going to get to talk to you to see if  
12 all the rules that can come into play, if there are any  
13 of them that you have such a strong objection to that  
14 you would refuse to follow and to enforce it if it came  
15 into play.

16 Because you can see if we only talked  
17 right now about the first phase of the trial, and if a  
18 jury found a defendant guilty of capital murder and we  
19 came back before the second phase of the trial before we  
20 started talking to you about the rules involved in the  
21 second phase. And if one of those twelve jurors said,  
22 wait just a second, I can't possibly follow one of those  
23 rules, I just simply have an objection to that, and you  
24 will refuse to do that under any circumstances, then  
25 that means we would have to dismiss that juror. That

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means we would only have eleven, and I've got to have twelve. So that means we have a mistrial, and that means everything we've done is a total waste of time. So that's why we have to talk about everything that could conceivably occur before the trial ever begins. So don't read anything nefarious into what it is we're doing about taking the second half of the trial and talking about it before the first half ever starts.

And we also recognize it's entirely conceivable we'll never get to the second half. And if the defendant is found not guilty, we won't. That's why we're talking about it now before the trial begins. We talked the other day when we were together about the trial could come in two parts.

The first part of the trial is going to be whether the defendant is or isn't guilty. Defendant's not guilty, case is over. The defendant is found guilty of capital murder, we come back and have a second phase of the trial. And the testimony at each phase of the trial is going to focus on a separate area.

The first phase of the trial, the focus of the testimony is going to be on the offense that was committed. Who did the crime? Where was it done? How was it done? When was it done? What was the prior relationship of the parties, if there was one? What

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was the reason for having done it, if there was one or if it's known? But everything about the crime you're going to hear at the first phase of the trial.

If a defendant is found guilty of capital murder, we come back and we have a second phase. And at the second phase of the trial, the focus of the evidence will shift. It will get off the crime itself, because you already heard all there is to hear about that. And instead, the second phase of the trial will focus on the character, the background, the comparative involvement of the defendant in the commission of the crime.

So, we wanted you to know both about the offense committed and the type of person that committed it so that you're better armed, better equipped, and better informed to make an intelligent answer to these questions that you're going to deal with at the conclusion of the evidence at the second phase of the trial.

We talked the other day briefly about these questions, and we talked about how it is they come into play. And the questions are over here on this board. Please feel free to look at them as we go through them, because we are going to spend about ten or fifteen minutes on them in just a second.

Question Number One asks: Do you find

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from the evidence beyond a reasonable doubt that there is a probability that the defendant would commit criminal acts of violence that would constitute a continuing threat to society? No matter who the defendant is, no matter what the case is, no matter who the jury is, there's never but two possible answers to that question. One of them is yes, and one of them is no. You'll answer that question whichever way the evidence leads you.

Question Number Two asks: Taking into consideration all the evidence, including the circumstances of the offense -- that's going to be what you heard at the first half of the trial -- also including the character and background of the defendant, as well as the defendant's personal moral culpability. Same as responsibility. That's going to be what you heard at the second part of the trial.

So you can see the first half of the second question simply instructs you to go back over all of the evidence in the case for the purposes of asking yourself this question: Is there a sufficient mitigating circumstance or circumstances -- meaning, is there a sufficient reason to make me believe that a life sentence will be more appropriate than a death sentence?

Again, no matter who the defendant, no

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matter what the evidence, no matter what the jury, there is two possible answers, yes or no. If the jury answers that first question yes and if the jury answers that second question no, the law says I have no choice. I have no option. I have no discretion. I must sentence the defendant to death, and that's exactly what I'm going to do.

On the other hand, if the jury should answer those questions in any way other than yes and no, in this order, meaning a no answer for the first question, or if there is a yes answer to the first question and a yes answer to the second question, if those questions are answered in any way other than yes and no, in that order, once again, the law says I have no choice. I have no luxury. I have no discretion. I must sentence the defendant to life, and that's exactly what I'm going to do.

So, the first thing I want you to know is that a jury in the State of Texas never sentences somebody to death, never sentences somebody to life for the commission of a capital murder. What a jury does is take the evidence in the case, whatever it is, use every single bit of it for the purposes of answering these two questions. You're -- while you don't determine life or death, you are entitled to know what the effect of your

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answers will be. Any questions so far?

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Okay. We talked the other day about the beginning of every criminal trial, whether it's a capital murder case or a speeding ticket, whether it's anything in between. Before the trial begins, the person who was accused of having committed that crime is innocent. They're not guilty. They stay innocent, they stay not guilty, unless or until, during the course of the trial the evidence presented by the State is sufficient to prove to the jury beyond a reasonable doubt that the defendant is, in fact, guilty of the offense. Unless or until that happens, the defendant is never guilty. Does that make sense? We all agree with that?

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Okay. So what we're saying necessarily is that that's a presumption. The presumption can be overcome, but it can only be overcome if the quality of the State's evidence is sufficient to prove a defendant's guilt beyond a reasonable doubt. At the conclusion of a capital murder case, if a defendant is found guilty of capital murder, obviously the presumption in being innocent has been erased by the quality of the evidence.

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At the beginning of every capital -- excuse me -- at the beginning of the punishment phase,

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the second phase of a capital murder trial, there is a brand-new presumption that pops into play, and that brand new presumption is this: For all defendants who are found guilty of capital murder, it is presumed that the appropriate punishment is life in the penitentiary. It is up to the State, through its evidence, to persuade you to believe beyond a reasonable doubt that, in fact, it should be the death penalty. So, we always start off with a lesser of all possibilities; and the State's obligated to prove with their evidence that the possibility should be bumped up from not guilty to guilty, from life to death. Any questions about that?

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We're going to talk about the questions themselves specifically in just a second. In the Court's charge there are going to be a lot of instructions for you that are given to you for the purposes of assisting you during your deliberations. There are going to be a lot of terms that are going to be defined for you. And we're going to find as we talk along here that there are also going to be a number of terms I'm not going to define for you.

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And if you ask yourselves, well, how do you guys decide down here at the courthouse what words you're going to tell us about and aren't going to tell us about. I'm going to tell you, it's really pretty

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simple. If we're going to be using a word that has some meaning to a lawyer in business, we have absolutely no right to expect you, who are not lawyers, to know what those words are; so we're going to tell you what they are.

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But on the other hand, if we're going to be using words that you and I and the lawyers and everybody here uses all the time at home, work, family, friends, socializing, whatever, we're not going to tell you what they are; because you already know what they are. We're going to see examples of both of those in just a second, but let's look at the first question.

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The first question starts off with a term, Do you find from the evidence beyond a reasonable doubt? We talked about a reasonable doubt the other day. We talked about the definition. We talked about it the other day from the standpoint of that's how much proof the State -- the quality, I should say, of proof that the State must present to you before a jury will be warranted in finding a defendant guilty. That is to say, the proof must show a defendant's guilt beyond a reasonable doubt.

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So it is that the first question, the State's got to prove to you beyond a reasonable doubt that this question should be answered yes. That means

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starting out, the answer to this first question is no. Just like starting out at trial in the first phase, defendant starts out being not guilty. Stays not guilty unless the evidence proves to a jury that the defendant is guilty beyond a reasonable doubt.

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Anytime we see the phrase, "Do you find from the evidence beyond a reasonable doubt," that means that the State, or the prosecution, has to present evidence to prove to you what the answer to the question should be. If that's where the proof is, that bumps everything up a notch, from not guilty to guilty, from life to death. Does the State's proof -- does it show a person's guilt beyond a reasonable doubt? Or as it relates to this question, does it show this question beyond a reasonable doubt should be answered yes? Unless or until they do so, the answer is no.

16

We understand that if a no answer to the first question is what the result is, that's different than yes and no, in this order. Yes and no, in that order, is what it takes for a death sentence. So a no answer to the first question means the case is over, because there is no way you can answer the second question that will ever bring the death penalty back into a possible role in that particular case.

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So can you see how it's presumed at the



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beginning of the second phase of a capital murder trial that if the appropriate punishment is life; because it's presumed the answer to that first question is no, unless the State's evidence proves beyond a reasonable doubt that the answer should be yes.

Okay. Back to the first question. Do you find from the evidence beyond a reasonable doubt that there is a probability? Let's talk about the word "probability," because that's a word I'm not going to define for you; because we use the word all the time, especially during football season. Odds on football games. The greater the odds, the less the probabilities. The greater the probabilities that one team will win, the other will lose.

At any rate, weather reports, same thing; twenty percent, forty percent, different probabilities. So I'm not permitted to tell you by definition in the Court's charge what the word "probability" means. I am permitted, however, to tell you by comparison that whatever the word probability does mean to you, there are two things that it cannot mean to you. One, whatever the word probability does mean to you, it must mean something more than a possibility. Anything could possibly occur. Because it could possibly happen does not mean that it's probably going to. On the other

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hand, whatever the word "probability" does mean to you, it cannot mean something as great as a certainty. Because something is probably going to happen does not mean that it's certain to happen.

And keep in mind how we're using the word "probability" within this first question. We're asking the State to prove the existence of a probability that a defendant would commit future acts of criminal -- future criminal acts of violence. Can you see how unfair it would be to a defendant on trial if the State did not have to prove the existence of a probability, but only had to prove the existence of a possibility? Anything could possibly happen.

Let's take that same thought process, and let's see how unfair it would be to the State if the law required the State to prove the existence of a certainty. Can't possibly do that. So what we do is we simply split the baby, took the middle row probabilities. If the word "probability" means something to you that's something more likely to happen than not, that's a deal. If you have some other idea as to what the word "probability" means, that's fine too, as long as your personal definition of the word "probability" makes it greater than something that is a possibility and makes it not as great as something

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that's a certainty. Does that make sense? Anybody have any questions about that?

Do you find from the evidence beyond a reasonable doubt there is a probability that the defendant would commit criminal acts of violence? It is -- in order to obtain a yes answer to this question, it is not required that the State prove the existence of a probability that the defendant on trial would commit future capital murders. Certainly if that evidence exists, the State's entitled to present it to you. But in order to get a yes answer to this question, the State does not have to prove the probability that a defendant on trial would commit a specific crime.

They are, however, required to prove the existence of a probability that the defendant would commit a certain category of crimes, that category of crimes being a category that constitutes an act of violence. And since the question doesn't say an act of violence as to persons or as to property, it can be either. Certainly capital murders are acts of violence as to persons. Murders, or assaults, or rapes, or robberies, or kidnappings are all acts of violence as to persons.

Acts of violence as to property. Arson, the burning of somebody's building, the burning of

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somebody's property. Acts of violence. Certain kinds of burglaries that require breaking, the breaking of a window or the breaking of a door to get into a window or a house, those are criminal acts of violence as to property. The taking of a baseball bat or brick, beating in the windshield of an automobile. Criminal acts of violence as to property. It is that general tenor, that general category of conduct that the State must prove beyond a reasonable doubt the existence of a probability that a defendant would commit. Not a specific crime within that general category. And these criminal acts of violence, to conclude the question, must be such that they constitute a continuing threat to society.

Now, the word society is not going to be defined for you. Most of the time when we think of society, we think of people that we are in contact with; people in our family, people at our neighborhood, people at our job, people at our school, wherever we might be. Ordinarily we don't think of people when we think of society that we don't have much contact with. I say that to you for this reason: I ask you to consider making a distinction, if you feel comfortable with making a distinction, between the word society and community.

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1 We all live in different communities, but  
2 all of our communities are within our society. I say  
3 that for this reason: We don't often think of society  
4 as including the people behind the penitentiary walls,  
5 but certainly they are within societies. For example,  
6 the person who, at 8:00 o'clock in the morning, punches  
7 in to go behind the walls of a penitentiary unit for the  
8 purposes of teaching a class to the inmates. She  
9 doesn't lose her right to be free from criminal acts of  
10 violence once she punches in and gets behind the walls  
11 and does her job. And then at the conclusion of every  
12 workday, if she is able to escape with her life and  
13 punch out, she does not thereafter reacquire her right  
14 to be free from criminal acts of violence on the outside  
15 of the walls. That's preposterous, and it's not the  
16 case.

17 The people behind the penitentiary walls  
18 have just as much right to be free from criminal acts of  
19 violence as those of us who aren't. That includes  
20 medical personnel, nurses, doctors, aids, so forth.  
21 That includes teachers, so forth. That includes guards,  
22 administrators, warden. And it also includes the people  
23 who are confined, the inmates; because they also have  
24 the right to be free from criminal acts of violence.  
25 Because we hope there might ever be a chance to

20

1 rehabilitate somebody, that can't possibly be done if  
2 we're going to let them always be a victim. So all I'm  
3 trying to point out is this, is the word "society" can  
4 include all the people all the time everywhere. Because  
5 if it didn't, then that first question would read,  
6 criminal acts of violence that constitute a continuing  
7 threat to the citizens of Harris County, Texas. And it  
8 doesn't say that. It says a continuing threat to  
9 society. That's the first question. Any questions  
10 about the first question?

11 If you answer no to that question, as I  
12 say, the case is over; because in order to get the death  
13 penalty, got to be a yes and no, in that order. And if  
14 you answer no to the first question, there is no answer  
15 you can make to the second one that's going to bring the  
16 death penalty back in play. If a jury should answer yes  
17 to the first question, we'll move to the second  
18 question.

19 Now, before we take up the contents of the  
20 second question, let's think for just a second, talk to  
21 ourselves about it, where a jury necessarily will have  
22 to be in their business before they take up the second  
23 question. First off, necessarily the jury would have  
24 had to have found the defendant guilty of capital  
25 murder. Because if they hadn't, we never would have

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1 gotten to these questions in the first place.

2 Secondly, the jury would have necessarily  
3 had to have answered yes to the first question, meaning  
4 not only did they find the defendant to be guilty of  
5 capital murder, but they also found in the first  
6 question the defendant was a continuing threat to  
7 society. So what the jury necessarily would have had to  
8 have done before they ever took up the second question  
9 was to have voted unanimously and to have voted  
10 consistently in such a way that the defendant's going to  
11 get the death penalty unless in the second question,  
12 because of some evidentiary feature within the case, if  
13 there is one, the jury decides to withdraw that death  
14 penalty and replace it with a life sentence.

15 Now, let's talk about the second question.  
16 The first thing we can see in the second question -- and  
17 it is most unique -- is the fact that we don't have the  
18 phrase, Do you find from the evidence beyond a  
19 reasonable doubt? Now this is going to be the third  
20 verdict that a jury's going to be asked to return.  
21 First one being guilty or not guilty. Second one being  
22 the answer to the Special Issue Number One. The third  
23 one here. This is the first time you'll be asked to  
24 answer a question where the State doesn't have to prove  
25 to you what the answer to that question should be. And

22

1 we know the State doesn't have to prove that because  
2 that phrase, Do you find from the evidence beyond a  
3 reasonable doubt," is not in that question. Well, where  
4 in the world does that leave us then? Because if the  
5 State doesn't have to prove to you what the answer to  
6 that second question should be and they do not, we know  
7 from our conversation the other day that the defendant  
8 on trial never has to prove anything; so he doesn't have  
9 to prove to you what the answer to that second question  
10 should be.

11 So, what's that mean? If the State  
12 doesn't have to prove what the answers should be and if  
13 the defense doesn't have to prove what the answers  
14 should be, then that necessarily means that the law  
15 recognizes there are going to be perhaps a lot of cases  
16 wherein there is absolutely no evidence of a mitigating  
17 circumstance in a case; because nobody's required to  
18 prove it, to put it there. The only requirement in the  
19 second question is that the jury search over the  
20 evidence in the case to see if it's there. And then if  
21 it is there, if it is there, if there is mitigating  
22 evidence in that case, does the jury view it to be  
23 sufficient to withdraw the death sentence and replace it  
24 with a life sentence?

25 Now the first half of that second

23

1 question, as we said a couple of minutes ago, all it is  
2 is an instruction to go back over every single piece of  
3 evidence in the whole case. Is there a sufficient  
4 reason why a life sentence in this case -- and I'm not  
5 talking about this one; but whichever is an imaginary  
6 case, is there a sufficient reason why a life sentence  
7 would be more appropriate in this case than a death  
8 sentence?

9

10 Now, I'm not going to define for you what  
11 the word "mitigating" means, because it's just simply --  
12 I can tell you it's consistent with a reason. Is there  
13 a reason for it, a sufficient reason? Some people  
14 might think -- and I cut myself off -- I'm not going to  
15 define mitigating for you; because what it might mean to  
16 one of you, you might have exactly the same information  
17 and another juror might think exactly the opposite.

17

18 For example, sometimes some folks may  
19 think if there is testimony in a case of a defendant on  
20 trial being seventeen years old at the time of the  
21 crime, some people might think the comparative  
22 youthfulness of that defendant might be mitigating,  
23 because the person is not mature enough to make good  
24 judgements and good decisions.

24

25 Some people, on the other hand, with  
exactly the same information may say, well, but I'm

25

1 stuff that you use to evaluate. Throw it out. It's not  
2 worthy of your consideration. Use it if it is.

3 Now if the jury says, yeah, there is some  
4 mitigating evidence in this case, your next question to  
5 decide is, is there mitigating evidence sufficient to  
6 make us believe that a life sentence would, on the  
7 whole, really be a more just verdict in this case in  
8 that instance. If your answer to that question is yes,  
9 your answer to that whole question is yes. If your  
10 answer is, yeah, we believe there is mitigating  
11 evidence, but we don't think it's sufficient to withdraw  
12 the death sentence, we're going to keep it, then you  
13 answer that whole question no. Any questions about the  
14 questions?

15

16 Let's talk for just a second about this.  
17 I can't necessarily put myself in the seats of any of  
18 the five of you folks, but I can say this: That if I  
19 didn't spend my life down at the courthouse, and if I  
20 was a citizen coming down here for jury duty, and if  
21 somebody said to me, let me see if I got this right, I'm  
22 a juror in a case; and in this imaginary case, whatever  
23 it might be, the State puts on enough evidence that  
24 makes me believe beyond a reasonable doubt a defendant's  
25 guilty of capital murder. And let's just also say that  
the State puts on enough evidence to make me believe the

24

1 going to tell you something. Anybody who is so mean  
2 that they would commit that crime at that young age,  
3 we've lost him anyway. Same information reacted to  
4 differently by different people.

5

6 In another case, you might have a case  
7 where there's testimony of a person being mentally  
8 retarded. Some people might say mental retardation,  
9 that's mitigating. Other people might say, no, it's  
10 not, because you can't fix it this time. It is what  
11 it's always going to be. A third group of people may  
12 very well say, well, wouldn't it make a difference as to  
13 the degree of the retardation? Is it just borderline  
14 retarded? Is it moderately retarded? Is it severely  
15 retarded? The more retardation, perhaps the more  
16 mitigation. The less retardation, perhaps the less  
17 mitigation.

17

18 So, you can see that everybody reacts  
19 differently to what it is. That's your call. We are  
20 never going to try to commit you as to how far or as to  
21 what result you're going to come up with if there is any  
22 mitigation in the case, whether it's sufficient to do a  
23 life sentence or not. But we are entitled to commit you  
24 to the fact that you'll consider everything, listen to  
25 it. For heaven's sake, if you don't think it's  
worthwhile, throw it out; but put an end to the mix of

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1 answer to that Question Number One should be yes.

2 That is to say, not only is the defendant  
3 on trial guilty of capital murder, but I also believe  
4 that he's a future threat to society. Now how is it  
5 that I'm going to come up with an answer that's going to  
6 make me say, but I don't think the death penalty should  
7 apply. It's by the consideration of the evidence in the  
8 case. I'm not saying that you should come up with a yes  
9 answer. I'm not saying you should come up with a no  
10 answer. I'm saying, that's your decision. But what I  
11 am saying is each of these decisions that a jury makes  
12 is independent of the next decision that the jury makes.  
13 And because you answered one question one way has  
14 absolutely no bearing on how you should answer the other  
15 question.

16

17 Now you may consider the three  
18 decisions -- the guilty/not guilty, yes and no to one,  
19 yes and no to two -- as being, say, three points of a  
20 triangle. All the information you're going to use to  
21 make that decision comes from inside the triangle. That  
22 is the evidence in the case. Every single bit of  
23 information is going to go come from there. But the  
24 questions all address that pile of information from a  
25 different perspective, and they're asking something  
different.



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1 So, that's why no matter how you answer  
2 one question, that can't possibly be the reason why you  
3 would answer the next question in one way or the other.  
4 You've got to go back and look at the evidence in the  
5 case. I have used examples of the second question about  
6 age and the mental retardation. Doesn't have to be  
7 anything like that at all. It could be the facts of the  
8 case. Maybe your jury thought there might be -- that  
9 the victim in the case really, really had -- (inaudible)  
10 it wasn't as pure, for example, as yours might have  
11 been.

12

12 You might say when the first question  
13 starts out, "taking into consideration the circumstances  
14 of the offense," maybe he would say, well, that might be  
15 enough to make me think there is a reason why a death  
16 sentence should not be imposed. Maybe, on the other  
17 hand, it might be some particular aspect of a  
18 defendant's conduct.

19

19 You may have a defendant on trial who is a  
20 veteran from Desert Storm/Vietnam, who led a perfectly  
21 miserable life after getting out of the service. You  
22 might find somebody who, just a week before the crime  
23 occurred, was driving down the street, doing absolutely  
24 nothing wrong, saw a house on fire, jumps in the  
25 apartment house, saves a couple of kids that would have

28

1 surely perished but for his work at the risk of his own  
2 life.

3

3 You might find conduct such as that  
4 deserves some attention. You might find in one case  
5 that it is sufficient to make you withdraw the death  
6 sentence and replace it with a life sentence. Maybe you  
7 wouldn't. That's your call. But that's the kind of  
8 stuff we're thinking about and talking about. And the  
9 idea is to not start off now saying that because you  
10 answer guilty and yes to One that, you know, that you're  
11 never going to answer yes to Two. What we're trying to  
12 commit you to doing is that you'll give a legitimate  
13 consideration to all of the testimony in the case before  
14 you do come up with an answer to Question Number Two.  
15 And if you -- if the consideration leads you to a yes  
16 answer, that's what we want to you do. If your  
17 consideration leads you to a no answer, that's what we  
18 want you to do. But we want you to make your decisions  
19 on the basis of how you evaluate whatever the evidence  
20 is in a given case. Anybody have any questions about  
21 that?

22

22 Punishment for capital murder is life and  
23 death. That's pretty simple. Well, death is pretty  
24 simple. Life; let's talk about it, because sometimes we  
25 find folks have different ideas about what a life

29

1 sentence means. I'll tell you in the Court's charge and  
2 I'll tell you now that in the event this defendant is  
3 found guilty of the offense of capital murder, and in  
4 the event the jury answers these two questions in such a  
5 way that a life sentence is imposed, I will tell you  
6 that this defendant cannot be released from the  
7 penitentiary before he has actually served at least  
8 forty calendar years. So if this is 1999, we're talking  
9 about the year 2039.

10

10 Now, at the conclusion of forty years the  
11 defendant would become eligible to be considered for  
12 parole, whether parole will or will not good granted is  
13 something over which we have no earthly idea, right?  
14 Whether a person is or is not paroled will depend upon  
15 evaluations made by prison authorities. That is to say,  
16 what was the person like during their forty years here?  
17 Those evaluations by those prison authorities will be  
18 sent to the Board of Pardons and Paroles.

19

19 The Board of Pardons and Paroles. We have  
20 no idea who they'll be forty years from now. The Board  
21 of Pardons and Paroles will make recommendations based  
22 upon those evaluations or perhaps based upon whatever  
23 they want to think about. The governor of the State of  
24 Texas, we have no idea who he or she is going to be  
25 during the year 2039. And the Governor of the State of

30

1 Texas can either follow those evaluations or  
2 recommendations, refuse to follow them, or make just  
3 simply remarkable political decisions. We don't know  
4 what's going to happen. The point being, no matter what  
5 does happen, it's just as likely one defendant who gets  
6 a life sentence will be paroled at the conclusion of  
7 forty years, and it's just as likely that another  
8 defendant who gets a life sentence will be kept there  
9 until he draws his absolute last breath. There is just  
10 no telling.

11

11 The point I'm getting at is we can't  
12 factor into the mix today in the courtroom what is going  
13 to happen forty years from now. It is necessary for the  
14 jury to answer these two questions based upon the  
15 evidence that exists in the trial of the case. But I do  
16 want you to know what the rule is as to what a life  
17 sentence means to the minimum, and to the minimum it  
18 means forty years. It may mean natural life, but it's  
19 never going to mean less than forty years.

20

20 Now I say that, because I don't want some  
21 juror who might have in his or her mind the notion is,  
22 well, I've read a person that gets a life sentence can  
23 get out on parole in forty or forty-five years;  
24 therefore, I'm not going to answer the questions in such  
25 a way that a life sentence is assessed. That's not



31

1 enough. Any questions about that?

32

2 Now take this capital murder business and  
3 set it aside for just a second, except to this extent.  
4 The capital murders that we're talking about here, the  
5 types of conduct that cause or justify a capital murder  
6 allegation is the intentional murder; that is to say,  
7 the intentional taking of the life of another human  
8 being without there being any legal justification for  
9 having done it, without there being any legal excuse for  
10 having done it. Meaning, can't be self-defense.  
11 Self-defense is a legal excuse. Can't be an accident,  
12 because it's not intentional. So it takes somebody who  
13 wants a result to occur and chooses a course of conduct  
14 that will cause that result to occur.

33

15 But capital murder is, first off, a  
16 murder, the intentional taking of the life of a human  
17 being without any justification, without any excuse.  
18 And it's done during the course of the commission of one  
19 other major felony. One portion of our indictment, the  
20 claim is that the murder was committed during the  
21 course -- during the course of committing a kidnapping.  
22 That's the other major felony. Another one, it's  
23 claimed a murder committed during the course of another  
24 major felony. That other major felony being another  
25 murder. Two murders at the same time, same criminal

33

1 murder. That is to say, not capital murder, but guilty  
2 of murder. And can you see that the murder that we're  
3 talking about is a lesser offense carved out of the  
4 greater offense of capital murder? That is to say, the  
5 intentional murder during a kidnapping where they can't  
6 prove the kidnapping. We still have the intentional  
7 murder.

34

8 The punishment range for murder in the  
9 State of Texas is remarkably different than the  
10 punishment range for capital murder. The range of  
11 punishment is for confinement in the penitentiary for  
12 life, or by confinement in the penitentiary for any  
13 number of years not less than five, or more than  
14 ninety-nine; and a jury can -- if they think it makes  
15 some difference in a case, they can also impose a fine  
16 as long as the amount of the fine does not exceed  
17 \$10,000.

35

18 But you can see that the simplistic terms,  
19 five years to life, is an awful lot of room to roam  
20 within which to assess somebody's punishment. And there  
21 is a reason for that. All sorts of different kinds of  
22 defendants? Some of them are better than others. All  
23 sorts of different kinds of victims. Some of them have  
24 more worthy lives to society than others. All sorts of  
25 different kinds of circumstances; some more gruesome,

32

1 episode. That's what it takes for the State to prove a  
2 capital murder. They've got to prove both the  
3 intentional murder and the other felony, the kidnapping,  
4 or the other murder; and they have to prove the  
5 existence of each of them to you beyond a reasonable  
6 doubt, though.

33

7 Anytime the State's required to prove  
8 beyond a reasonable doubt the existence of two things,  
9 there are three possible outcomes. Possible outcome  
10 number one is they can. And if they can, then the  
11 jury's obligation is to find the defendant guilty of  
12 capital murder. Possible outcome number two: They  
13 can't prove either one of them. If that's the outcome,  
14 the jury's responsibility is to find the defendant not  
15 guilty of anything. Possible outcome number three:  
16 Maybe they could show -- the State could show beyond a  
17 reasonable doubt the existence of the intentional  
18 murder.

34

19 But let's just say they can't show it's  
20 done during the commission of a kidnapping. Obviously,  
21 you don't let the defendant go. So what I'd do if  
22 something like that were to occur, if the evidence were  
23 to suggest that possibility, I'd give you the third  
24 possible verdict form. You'd have guilty, not guilty of  
25 anything. The third possible verdict would be guilty of

34

1 some more vicious, some more heinous than others. And  
2 we want you, the jury, to have a chance to take the  
3 evidence in a given case and put it up and down that  
4 line or range of punishment, wherever you think it ought  
5 to fit.

35

6 Because wouldn't it be pretty disgusting  
7 if we ask you to give up your time, come down here and  
8 have a trial, and then ordered to sentence a defendant  
9 to a particular period, saying, no case could ever  
10 possibly be different from another. That's just simply  
11 not the case, because they are all different.

36

12 For example -- and I know that we're all  
13 conditioned by television, what we see and hear and so  
14 forth. And you think of a murder case, and a particular  
15 set of circumstances comes to your mind. They --  
16 whatever that set of circumstances is, there are at  
17 least as many circumstances that will offset that.

37

18 For example, you think of murder. Very  
19 seldom do we think about the seventy-five-year-old  
20 couple, been married for fifty years, and they love each  
21 other dearly. She is on a life support system. She's  
22 going to die. He knows it. She knows it. They pray  
23 about it. She talks to him. She convinces him she  
24 doesn't want to suffer and go through the degradation of  
25 living a few months, or whatever it is, on life support.

35

1 She wants him to take her out of her misery. She prays  
2 about it. She thinks about it. Just one day, seeing  
3 her while she's asleep, walks over to the wall, pulls  
4 the plug, and she dies. Without getting into the  
5 morality of that, in this state that's murder. That's  
6 the intentional taking of a life of a human being  
7 without there being any legal justification, without  
8 there being any legal excuse.

9

Now maybe you would think that would be a  
10 case where that seventy-five-year-old husband who did  
11 that, not out of anger, not out of hate, not out of  
12 revenge, but out of love -- maybe you wouldn't think  
13 that seventy-five-year-old gentleman ought to receive a  
14 life sentence in the penitentiary. I don't know. Maybe  
15 you would. But you see, if you didn't think that, we've  
16 got to give the room to do something else.

17

So, my question to you is this: Let's  
18 consider the possibility that you're a juror in some  
19 imaginary capital murder case, and your jury has heard  
20 all the evidence at the first phase of the trial. Your  
21 jury goes out, your jury deliberates, and your jury  
22 unanimously -- a person determines that the defendant on  
23 trial, whoever he or she is, is not guilty of capital  
24 murder; but you do determine that the defendant on trial  
25 is guilty of murder.

36

You come back. You have the second phase  
2 of the trial. Whatever the evidence was at the second  
3 phase of the trial doesn't make any difference,  
4 specifically; but you go out and deliberate as to what  
5 punishment you're going to impose, because you've got  
6 life and five to ninety-nine.

7

Let's just say that your jury determines  
8 that the defendant on trial, based upon the evidence,  
9 ought to receive a life sentence. Is there anybody here  
10 who could not consider assessing that imaginary  
11 defendant's punishment at confinement in the  
12 penitentiary for life if you thought, based upon  
13 whatever the uniqueness of the testimony was in that  
14 particular case, that that was the right result to  
15 reach? I'm not asking you if that's what you'd do.  
16 I'm asking you, are you available to that being a  
17 legitimate sentencing option if the circumstances  
18 dictated it in your mind? Anybody here who would not  
19 consider that certain circumstance, certain being the  
20 ones you thought right?

21

Okay. We'll take that same question, and  
22 I'm going to flip it. Your jury finds the defendant in  
23 a capital murder not guilty of capital murder. Jury  
24 finds the defendant guilty of murder. You come back and  
25 hear more evidence at the second phase of the trial

37

1 regarding the defendant's character and background.  
2 Whatever that evidence was doesn't make any difference,  
3 specifically.

But your jury goes out. Jury believes a  
4 life -- excuse me -- five-year sentence is appropriate.  
5 Is there anybody here who could not consider assessing  
6 that imaginary defendant's punishment at confinement in  
7 the penitentiary for five years, if, after having heard  
8 all of the evidence in the case and the uniqueness of  
9 it, whatever it was, if you thought that was the right  
10 thing to do based upon the circumstances of that case?  
11 And again, I'm not asking you, would you do it? I'm  
12 asking if -- are you open to the notion that that could  
13 be a legitimate sentencing option under the appropriate  
14 conditions? And I gather y'all could.

Okay. All we're trying to do -- and all  
16 we're trying to do is make sure you're open to  
17 everything. Whatever result you choose, you'll choose  
18 that result on the basis of whatever evidence is  
19 presented to you in the case. And can you see that's  
20 exactly the same thing we talked about with these  
21 questions? We want to be sure that you're available to  
22 go either way; whatever way it goes, you'll go there  
23 because that's where the evidence takes you. But  
24 whether you go to one direction on one of these  
25

38

1 questions doesn't mean you have to go in the same  
2 direction on the other question, because that question  
3 is asking you different things.

Just like buying a car. You've got a list  
4 of things. Does the car have a motor? Yes. Does the  
5 car have a steering wheel? Yes. That doesn't mean  
6 that the car has got tires. That's a pretty stupid  
7 example, but consider the source. Oh, no comment?

Okay. There is just a couple of other  
9 quick things I want to talk about for a second. One of  
10 them -- and I don't want to talk about this in legalese,  
11 because I don't think it's worthy of it at this point in  
12 time. But I do want to touch with you about the  
13 concept. We have an aspect of our law that says that  
14 if two or more people get together, conspire to commit a  
15 felony offense, a crime, that a conviction of one of  
16 those coconspirators cannot be had solely and only on  
17 the testimony of another coconspirator without  
18 absolutely any other corroborating information.

What we mean by that is this: If another  
21 guy and I agree to rob a bank, I'm the getaway driver,  
22 he's the bank robber, pull into the bank, he runs in,  
23 robs the bank, I stay in the car, he comes back out of  
24 the bank, jumps in the car, and I drive him off. And  
25 I'm saying to myself, I'm pretty clever, because

39

1 everybody saw him; they didn't see me. And off we go.  
2 We get caught.

3

3 If he is going to testify against me --  
4 whether he is convicted or not convicted makes no  
5 difference -- but if he's going to testify against me,  
6 in order for me to be convicted, there has to be some  
7 other evidence from an independent source other than a  
8 coconspirator that is such evidence that it tends to  
9 connect me to the commission of the crime. It does  
10 not, on its own, have to establish beyond a reasonable  
11 doubt that I committed the crime. It has to tend to  
12 connect me to the commission of the crime.

13

13 For example, if there is a bank bag my  
14 coconspirator, the robber, says, He's the one that did  
15 it. There is absolutely no evidence, but on the bank  
16 bag there is my fingerprints. Is there evidence from an  
17 independent source that tends to connect me to the  
18 commission of the crime and corroborate the testimony of  
19 the coconspirator. Is there anybody here who has a  
20 disagreement to that -- as to that law that is to the  
21 level that you wouldn't follow it if it came into play  
22 in this case?

23

23 And I don't have any idea if it will or if  
24 it won't. Okay. I take it then, that aspect of the  
25 law, that you would enforce it if you were a juror;

40

1 because as a juror, your job is, "A," to follow the law,  
2 and to "B" enforce the law that's contained in the  
3 Court's charge. And I gather that you will.

4

4 One other area. We have two different  
5 brands, I guess is one way to describe it, of evidence  
6 that can come into play during the course of a trial.  
7 There is direct evidence, and there is circumstantial  
8 evidence. Direct evidence means eyewitness testimony.  
9 Somebody actually saw something happen, or a defendant  
10 on trial who confesses to having committed a crime. But  
11 you can still see that's eyewitness testimony, also.

12

12 The other kind of testimony is  
13 circumstantial testimony, circumstantial evidence.  
14 Circumstantial evidence is all other kinds of evidence,  
15 save and except for direct evidence, eyewitness  
16 testimony. Sometimes we hear people say, I couldn't  
17 ever convict anybody on circumstantial evidence. And  
18 they really don't have any idea about what they're  
19 saying. The law doesn't care whether testimony in a  
20 case is direct or whether testimony in a case is  
21 circumstantial. What the law cares is: Does the  
22 quality of the evidence in the case rise to the level  
23 that it satisfies a jury beyond a reasonable doubt of  
24 the defendant's guilt?

25

Just like the law doesn't care how many

41

1 witnesses there are in a case. The law doesn't say it  
2 takes a minimum of twenty-seven witnesses to establish  
3 reasonable doubt. The law says one of them is good  
4 enough, if the jury believes one of them beyond a  
5 reasonable doubt. So, I say that for this reason:  
6 Circumstantial evidence, while it's not direct  
7 testimony, we all know that one of the singular best  
8 identifying features of a human being is a fingerprint;  
9 because we've been conditioned all our lives to know  
10 that nobody has the -- no two people have the same  
11 fingerprint.

12

12 But a fingerprint, while it specifically  
13 establishes the identity of somebody, is circumstantial  
14 evidence. It's circumstantial evidence; because while  
15 that's my fingerprint, there is no way to establish when  
16 I put it there, depending upon the object with my  
17 fingerprint. So there is no way to show where the  
18 object was when my fingerprint was put there. Now if  
19 it's a nonmoveable object, obviously you know where it  
20 was; but if it's a gun, you don't. Could have been in  
21 my hand at the house, where I have a right to have it.  
22 Could have been in my hand at the bank. Don't know.

23

23 So, what I'm saying is this: It is the  
24 quality of the testimony and how the jury evaluates the  
25 credibility of that testimony that's important. It's

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1 not whether it's direct or circumstantial.

2

2 For example, you might have three drunks  
3 who are laying out here by Enron Park while construction  
4 is going on. And some man gets shot. And the three  
5 drunks come in and testify. They were, each of them, on  
6 the verge of just passing out and drunker than Cooter  
7 Brown, who saw this person shoot. Can you see how a  
8 jury may very well not believe beyond a reasonable doubt  
9 that whoever that defendant was on trial was the one who  
10 committed that crime because of the quality of the  
11 witnesses, or the condition of the witnesses, I guess I  
12 should say, at the time they claim they saw this?

13

13 On the other hand -- but that's direct  
14 testimony. On the other hand, you might have a man  
15 that's a pillar of the community, who sees a defendant  
16 with a gun standing right next to the man who's dead.  
17 They're buds. They're talking. That's all he sees, and  
18 he leaves. Five seconds later another man comes up,  
19 hears a gunshot, doesn't see who shoots who, but sees  
20 the defendant standing there with a gun, sees the man on  
21 the ground bleeding, doesn't see who did the shooting.  
22 The third man sees the defendant walk away from the  
23 scene with the gun in his hand, calls the police.  
24 Police arrest him, seize the gun.

25

Ballistics shows the gun was in the hands



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1 of the defendant at the time he was arrested leaving the  
2 scene, was exactly the same gun that fired the bullet  
3 into the body of the man that was killed. Not a single  
4 piece of eyewitness testimony. But can you see, based  
5 upon those circumstances all intertwined together, a  
6 jury might believe in that case beyond a reasonable  
7 doubt that that particular defendant on trial was the  
8 one that committed that crime? So the point being, it's  
9 not the kind of evidence, whether it was direct or  
10 circumstantial; it's the quality of the believability.

11 So my question is this: Is there anybody  
12 here, who if after having heard all the evidence in the  
13 case -- and I don't know if this is going to come into  
14 play or not -- is there anybody here who after having  
15 heard all the evidence in the case and all the testimony  
16 was circumstantial, but if you believe that testimony  
17 beyond a reasonable doubt, is there anybody here who  
18 would refuse to find a particular defendant not guilty,  
19 even though you believe the defendant, but because it  
20 was circumstantial?

21 MR. MCCLELLAN: I think you asked that  
22 question wrong. I think you said, Could you find him  
23 not guilty if you believe it? You possibly ought to go  
24 the other way.

25 THE COURT: If I said that, you obviously

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1 were following me. Would you refuse to find the  
2 defendant guilty, even if you believe the testimony  
3 beyond a reasonable doubt, but it was circumstantial  
4 evidence and only because it was circumstantial. Did I  
5 say it right? You guys know what I'm trying to say?  
6 Thank you. Anybody here who wouldn't do that? I  
7 apologize. What questions do any of the five of you  
8 have for me?

9 What we're going to do next is we're going  
10 to send you out and bring you in individually. And  
11 these folks know what they're doing. They are going to  
12 ask you questions. They'll ask them right. And the  
13 whole idea is this: Quite frankly, it is to run the  
14 rules by you that can come into play; because we want to  
15 know, are you going to be able to follow them when and  
16 if you're a juror? And I gather from what you've heard  
17 so far that everybody can.

18 The second thing we're going to want to  
19 know, and the real purpose for this is for you to  
20 satisfy yourself and for the lawyers certainly to be  
21 satisfied that if you are a juror in the case, you'd  
22 listen to everything that was presented to you, evaluate  
23 however you saw fit, and come up with what you think is  
24 the right result to reach, no matter who sits here.

25 If you find the defendant guilty, that's a

45

1 deal. If you find the defendant not guilty, that's a  
2 deal. If you answer the questions and a life sentence  
3 is imposed or death sentence is imposed, that's final;  
4 because your job is not to please the lawyers, not to  
5 please me. Your job is to be satisfied with yourself  
6 that five years from now when you have long since  
7 forgotten the name of every single person in this  
8 courtroom, but you're still satisfied as you look back  
9 on it that what you did in September of 1999 was, in  
10 fact, the right thing to do.

11 And then -- and you can't make that  
12 decision in your mind, I don't believe, without being  
13 completely open to all the possibilities before the  
14 evidence ever begins. Now once the evidence concludes,  
15 you do what you think you ought to do; but be open to  
16 all the possibilities before it begins. Does that sound  
17 like a deal? Does anybody have any questions?

18 Okay. If you would, retire to the  
19 hallway.

20 (Prospective jurors retire to hallway.)

21 STEVEN ALLAN WIEDMANN,  
22 having been first duly sworn, testified as follows:

23 VOIR DIRE EXAMINATION

24 BY THE COURT:

25 Q. Mr. Wiedmann, first off, let me ask you this:

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1 Taking into consideration the things we talked about  
2 this morning, adding to it the things we talked about  
3 the other day when the whole group was here, out of  
4 everything we have talked about up here, do you have any  
5 questions for me?

6 A. None right now.

7 Q. Is there anything to this point, sir, that we  
8 have not addressed that you feel as though we should  
9 talk about because it might have some bearing on your  
10 service as a juror in this case?

11 A. The only thing is just a matter of me missing  
12 two weeks of work.

13 Q. Talk to me about it.

14 A. I mean, I would be able to make it; but it sure  
15 would put me in a financial bind. But other than  
16 that --

17 Q. Well, is it something that's somewhere in here?  
18 And I don't remember where the question is, but is there  
19 anybody here -- where was that question? Okay. You  
20 know from our conversation, Mr. Wiedmann, that depending  
21 upon today, we may have you back on the 29th of  
22 September, which is two weeks from yesterday. You also  
23 know that the trial, if you are selected as a juror,  
24 will begin on Monday, the 4th of October. We know it  
25 will last for longer than one full week, but we know it



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1 will not last for as long as two. I recognize the fact  
2 that the finances, for all of us from time to time --  
3 and I want to tell you that I don't think -- this is  
4 just my thought. I don't think that people ought to  
5 have to be required to serve as a juror in a case and  
6 then be punished for having done it.

7 But the flip side of that coin is this:

8 If you can give us your attention, give us your  
9 judgment, give us your common sense during the period of  
10 time that we were talking about, we had rather have you.  
11 Now, that's your call. What's your answer?

12 A. I mean, if y'all select me, I'll be here.

13 Q. Okay. Well -- and along those lines,  
14 Mr. Wiedmann, let me reinforce something I mentioned the  
15 other day. We are not going to waste your time; because  
16 if we do, we're not going to get your best product, and  
17 that's what we're after. That's why the lawyers spend  
18 some time trying to determine who it is they do want,  
19 because they do want the best product out of whoever it  
20 is they have. So, you're okay if selected?

21 A. Yeah.

22 Q. Is there anything else that you can think of  
23 that in any way might interfere with your service as a  
24 juror in this case during the time frame we talked  
25 about?

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1 A. No, sir.

2 Q. Anything about all the rules that you have any  
3 disagreement with at all?

4 A. Huh-uh.

5 Q. So if you were a juror, you could follow them,  
6 as well as enforce them?

7 A. Yes.

8 Q. The idea we talked about in terms of being  
9 open-minded to everything, does that sounds like you?

10 A. Pretty much.

11 Q. Well, now -- now you're hesitating on me.  
12 What's your thought? You had a reservation, and I  
13 don't know what it was about.

14 A. It's just a matter of what you consider fair,  
15 as far as I'm concerned.

16 Q. Well, fair being open-minded before you ever  
17 hear anything?

18 A. Yeah.

19 Q. This business, honestly, is no more difficult  
20 than you being in a strange town sorting out who you  
21 want to ask directions from. We all know we guys don't  
22 ask directions. Because what we're dealing with is not  
23 only the message, but the messenger. You might have  
24 somebody use exactly the words that are meaningful to  
25 you, but you don't believe the person who's saying them.

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1 So that's why you got to be open to begin with.

2 Now once you hear stuff, then that  
3 influences you what you're going to do; and that's the  
4 way it's supposed to be. But can you see, also, Mr.  
5 Wiedmann, what we talked about, that if you answered yes  
6 -- if you found somebody guilty of capital murder, and  
7 if you answer that Question Number One yes, that you  
8 thought the person would be a future danger, that still  
9 doesn't necessarily mean that that person ought to  
10 receive the death penalty. You agree with that?

11 A. Yes.

12 Q. Because you still have to consider that second  
13 question. There may be something about the case,  
14 whether it be about the defendant, the victim, the facts  
15 of the case, that make you think a life sentence is more  
16 appropriate. So you're not foreclosing the possibility  
17 of a life sentence, even though you find somebody guilty  
18 of capital murder and even though you find he's a future  
19 danger, are you? Right?

20 A. Okay.

21 Q. You're not foreclosing. Before we begin, do  
22 you have any questions for me?

23 A. No. That about covers it.

24 Q. Mr. McClellan is going to make this most  
25 painless for you.

50

# VOIR DIRE EXAMINATION

2 BY MR. MCCLELLAN:

3 Q. Mr. Wiedmann, first thing I want to know is,  
4 are you in a situation where if you are here, you don't  
5 get paid?

6 A. Yes.

7 Q. So everyday you're down here, if you were in  
8 trial for two weeks, you would not get paid for two  
9 weeks?

10 A. Exactly.

11 Q. Does that put you in a pretty severe situation?

12 A. I mean, I'm only making about \$340 a week right  
13 now. So, I mean, that's -- I got a truck payment I have  
14 to worry about, and a few other purchases I made before  
15 that I still have to worry about. So, I mean, like I  
16 said, I would possibly be able to swing it, but it would  
17 put me in a bind for the next couple of months.

18 Q. Mr. Wiedemann, you're pretty much in control of  
19 your own destiny here. My belief is you shouldn't have  
20 to lose money to be on a jury. Most jurors that are  
21 going to be sitting other over here are going to be paid  
22 by their employer, because they're a salaried employee.  
23 They don't work by the hour. Or they work for Exxon,  
24 and they're going to pay part of their civic duty.

25 Evidently being in the job you're in,

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1 plumbing, and being the plumber, if you're not there,  
2 you don't get paid. A lot of people who -- obviously,  
3 most people could never give up two weeks and would try  
4 to think of something to say to get off the jury, and I  
5 appreciate the fact you're not doing that. But if you  
6 were a juror for that period of time, is that going to  
7 put you in such a situation that your concern, logically  
8 so, would be somewhere other than the trial at all  
9 times.

10 In other words, you'd be concerned about  
11 how I'm going to make the bills meet. And if we have  
12 deliberations, I can't tell you how long they may last.  
13 They may last several hours. They may last several  
14 days. And every day longer than they last is a day  
15 longer that you don't get paid. And there is just  
16 competing things there that, naturally, you would be  
17 concerned about other things and could not give your  
18 full, undivided attention; because everybody else is  
19 going to be being paid. You're the only one that's  
20 there suffering under that circumstance. Would this be  
21 a situation that would cause your mind, you think, to be  
22 other places at certain times?

23 A. I think it would.

24 Q. Okay. And thus, you probably -- you couldn't  
25 assure us you could give your full, undivided attention?

52

1 A. Not the whole time.

2 Q. Okay.

3 MR. MCCLELLAN: I think we have an  
4 agreement, Your Honor.

5 THE COURT: As I understand, there is an  
6 agreement by and between the parties Number 65, Mr.  
7 Wiedemann, may be excused.

8 Mr. McClellan, your agreement?

9 MR. MCCLELLAN: Yes, Your Honor.

10 THE COURT: Ms. Connors?

11 MS. CONNORS: Yes, Your Honor.

12 THE COURT: Mr. Hill?

13 MR. HILL: Yes, sir.

14 THE COURT: Mr. Wentz?

15 MR. WENTZ: Yes, Your Honor.

16 THE COURT: Mr. Mamou, yourself?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: Is it your request, sir?

19 THE DEFENDANT: Yes, it is.

20 THE COURT: Mr. Wiedemann is excused by  
21 agreement.

22

23

24

25

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1 ZENOBIA PRINCE,  
2 having been first duly sworn, testified as follows:

3 VOIR DIRE EXAMINATION

4 BY THE COURT:

5 Q. How are you today?

6 A. Okay.

7 Q. Miss Prince, before we begin, let me ask you  
8 this: I'd ask you to remember back to Monday, when the  
9 whole group was together, the things we talked about  
10 that day. Add to it this morning the things we talked  
11 about this morning. And out of everything we have  
12 talked about so far, do you have any questions at all  
13 for me?

14 A. I don't have any questions.

15 Q. Is there anything to this point, Miss Prince,  
16 that we have not yet talked about that you feel as  
17 though we should because it might have some bearing on  
18 your service as a juror in this case?

19 A. Not that you've talked about, no.

20 Q. Okay. Is there anything at all that you can  
21 think of, whether it be something about your personal  
22 life, something about perhaps your professional life,  
23 something perhaps about your health, or something -- any  
24 other thing you could think of that might in any way  
25 interfere with your ability to be a juror in this case

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1 during the time frame that we've discussed?

2 A. When you initially told us about the time  
3 frame, you said the trial would start the first week in  
4 October?

5 Q. Yes, ma'am.

6 A. Possibly through the second week?

7 Q. No longer than.

8 A. On the 16th, I have a state exam that I'm  
9 already registered for.

10 Q. What day of the week is that?

11 A. That's a Friday.

12 Q. Well, we're anticipating it will be over with.

13 A. Okay.

14 Q. What happens if it's not?

15 A. What happens if it's not? Well, I wouldn't be  
16 able to take the test.

17 Q. Okay. And is that something that's curable  
18 somewhere?

19 A. I'm sorry?

20 Q. Is that something you could fix later on, that  
21 you can take later on?

22 A. Yes, I can take it another time.

23 Q. Okay. Miss Prince, you had told us on your  
24 questionnaire, Question Number Two actually was asked of  
25 you. Question was: Do you believe you have any

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1 knowledge of this case or capital murder case involving  
2 Charles Mamou, Jr., and Terrence Gibson and/or Mary  
3 Carmouche? You answered, Yes, I recognize the name,  
4 Mary Carmouche. Tell us about that, ma'am. When you  
5 say, I recognize it, do you mean just in its literal  
6 sense? It's a name you've heard before?

7 A. Yes.

8 Q. Does it belong to a person you've ever known?

9 A. No.

10 Q. Any family members?

11 A. No.

12 Q. The fact that it's a name you have heard  
13 before, do you recall from what source or where it was  
14 or what context you knew the name?

15 A. I believe it was a media -- from the media,  
16 some news report; but I'm not sure. I just thought I  
17 recognized it.

18 Q. And it is perhaps somewhat of a distinctive  
19 name. The fact it's a name you feel as though you may  
20 have heard from some source in the past, would that in  
21 any way interfere with or affect your ability to serve  
22 as a juror in this case?

23 A. No. I don't know who it is.

24 Q. Thank you very much. Before we begin the  
25 process, do you have any questions at all for me?

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1 A. I believe that it is something that our country  
2 has or the world has used as a form of punishment for as  
3 long -- for being in history, as I can recall, and that  
4 sometimes that is the result of the crime, that you have  
5 to pay by your life. Your penalty is life.

6 Q. What kind of crimes do you think would call for  
7 that type of --

8 A. What types of crimes?

9 Q. Right.

10 A. Depending on the circumstances and the  
11 evidence, I would assume that a crime that results in  
12 the death of someone else is a loss of life.

13 Q. Okay. All right. Now in your questionnaire it  
14 says, What are your dealings and feelings about the  
15 death penalty? And one of things you said, If you do  
16 the crime, you have to suffer the consequences.

17 A. Yes.

18 Q. Do you think the consequences for taking  
19 someone else's life is that your life may also have to  
20 be given?

21 A. Not necessarily.

22 Q. What do you think determines that, if it were  
23 to turn out to be that case?

24 A. I suppose it would be the evidence that was  
25 given, circumstances, whether or not it would be

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1 A. No.

2 THE COURT: Mr. McClellan.

3 MR. MCCLELLAN: Thank you, Your Honor.

4 VOIR DIRE EXAMINATION

5 BY MR. MCCLELLAN:

6 Q. Miss Prince, my name is Lyn McClellan. Along  
7 with Claire Conners, we represent the State of Texas in  
8 this case. Why don't you just sit back and relax.  
9 We're going to ask you to share with us, if you will,  
10 some of your opinions and beliefs about certain aspects  
11 of the law. I want to go over your questionnaire and  
12 ask you some additional questions about that and try to  
13 get a better feel for what your thoughts are and beliefs  
14 are about issues that might affect a case like this.

15 A. Okay.

16 Q. You say you may have heard that name,  
17 Carmouche, in the news or whatever?

18 A. Uh-huh.

19 Q. Do you recall anything you may have heard? How  
20 that was reported in there?

21 A. No, just the name. Just the name.

22 Q. Can you kind of tell me in your own words, what  
23 is your opinion about --

24 A. I'm sorry.

25 Q. -- about the death penalty?

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1 punishable by death.

2 Q. Okay. What kinds of circumstances do you think  
3 it would -- that you might hear that would make you  
4 believe, if I heard circumstances such as these, I would  
5 think death is probably more proper than something else?  
6 Is there anything?

7 A. I don't know if I could just give you an  
8 example of, you know.

9 Q. You say you watched some programs about the  
10 death penalty?

11 A. Uh-huh.

12 Q. On television?

13 A. Yes.

14 Q. And there is one about a person who was on  
15 death row and interviewing a man going through the  
16 process?

17 A. Yeah.

18 Q. What thoughts did you have about the death  
19 penalty after seeing that program?

20 A. My thought was that first of all, he was on  
21 death row a long time. I thought that was, you know, a  
22 long time to be on death row.

23 Q. Right.

24 A. I thought that it was hard on the family, the  
25 appeal process. You know, get to the point; and then

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1 appeal, appeal, and then back to death row.

2 Q. Right.

3 A. And --

4 Q. Which family are you talking about?

5 A. Well, both sides. It was hard, from what I saw  
6 on both sides of the family, to go through that.

7 Q. Right.

8 A. And then, you know, I think the person was  
9 given the opportunity to make his peace. And basically,  
10 I think this person contended that he was not guilty.

11 Q. Okay.

12 A. So I thought it was really hard on the family  
13 to have to deal with that, but I thought the process was  
14 a little lengthy.

15 Q. Okay. Did you get a feeling for yourself from  
16 looking at that program that -- as to whether or not you  
17 thought he was guilty or not?

18 A. I didn't -- it was just a documentation. I was  
19 just looking at the process.

20 Q. Did they tell much about the crime he allegedly  
21 committed?

22 A. Yes, they talked about his crime.

23 Q. Was that a type of crime that he committed that  
24 you thought the death penalty ought to be available for?

25 A. I don't think I had an opinion. I wasn't

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1 involved. I was just looking at the process. I didn't  
2 determine whether or not he should get death.

3 Q. Some jurors come and say they are in favor of  
4 the death penalty. They think it's a proper type  
5 punishment for certain types of crime. But certain  
6 jurors also go further and tell us they don't believe  
7 they could ever participate in a process whereby they  
8 would be called upon to make decisions that they knew  
9 would result in this Judge ordering the execution of the  
10 defendant sitting over here on trial. Do you have any  
11 doubts about your ability to participate in that type  
12 process and make that type of life or death decision if  
13 you thought that's what the law and the evidence called  
14 for?

15 A. I, personally, would not want to be the one to  
16 do it. I could do it, I think, if the evidence  
17 indicated; but I feel like that job was for someone else  
18 to do. I mean, someone has to give the lethal injection  
19 or pull the switch for the execution. That's someone's  
20 job. It's not my job. If I was put in that situation  
21 where I had to make the decision, I probably could. I  
22 just wouldn't necessarily choose to do it.

23 Q. Right. What about the process that we're  
24 talking about now being on a jury where you listen to  
25 evidence, and you're going to basically make some

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1 decisions that can result in the life or death of the  
2 person on trial? Any doubt about your ability to make  
3 those type decisions?

4 A. Because I believe in the process, the criminal  
5 justice process. If I was chosen and I had to make the  
6 decision, I would make that decision.

7 Q. You indicated that your husband's nephew, I  
8 guess, had been sent to the penitentiary?

9 A. Who, my husband?

10 Q. Your husband's nephew?

11 A. Oh, nephew, yes.

12 Q. Released, I'm not sure when?

13 A. Yeah.

14 Q. What did he go to the penitentiary for?

15 A. I'm not sure about all the circumstances, but I  
16 think he was involved in some type of robbery.

17 Q. Okay. All right. Was that here in Harris  
18 County or somewhere else?

19 A. Yes.

20 Q. Did he have a trial, or do you know?

21 A. Yes, he did.

22 Q. Did you attend any of the trial?

23 A. No.

24 Q. Or did your husband attend?

25 A. I think my husband did attend.

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1 Q. How much time did he get for the robbery? Do  
2 you know?

3 A. I'm not sure. I would say a couple of years.  
4 I'm not really sure.

5 Q. Did you have an opinion or did your husband  
6 have an opinion as to whether or not his nephew was  
7 treated fairly or not?

8 A. I never heard him say that he wasn't treated  
9 fairly.

10 Q. Was there a gun involved, or do you know?

11 A. I don't know.

12 Q. You don't know about that. You say your father  
13 was in the fast food restaurant when it was being  
14 robbed?

15 A. Yes.

16 Q. Was he the victim of a robbery then?

17 A. No.

18 Q. They were just robbing the establishment, and  
19 he happened to be a customer?

20 A. Right.

21 Q. Anything about that? Did he ever talk about  
22 that as being a scary situation?

23 A. My mother was more afraid. She was outside in  
24 the car.

25 Q. So he went inside to get food to take home or



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1 whatever?

2 A. Right.

3 Q. And somebody came in and robbed?

4 A. Yes.

5 Q. So he was in pretty close proximity?

6 A. He was in the room. I don't think he realized  
7 what was going on until toward the end.

8 Q. Do you remember how long ago was it you were on  
9 a criminal jury? You were on a criminal jury, and the  
10 case was dismissed?

11 A. I would say maybe five or six years ago, maybe.

12 Q. What kind of case was it? Do you know?

13 A. No, I don't remember.

14 Q. Did y'all go through voir dire, or did you just  
15 get in a room and you've been told it was dismissed?

16 A. I was chosen.

17 Q. You were chosen?

18 A. But we never did take our seats. We were told  
19 it was dismissed.

20 Q. There is a question here that says, Do you have  
21 any religious, moral, or ethical considerations that  
22 would prevent you from sitting in judgment of another  
23 person? You checked, no, that you did not have a  
24 problem with that. Then you wrote, I do not sit in  
25 judgment of people. Their actions speak for themselves.

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1 A person is innocent with me until proven guilty. The  
2 question, I think, was asking, Do you have any -- you  
3 know, some people say, I could never sit in judgment and  
4 make a determination as to whether or not a person is  
5 guilty or not guilty. Can you do that?

6 A. Yes.

7 Q. Were you saying, then, that you think that  
8 that's more their responsibility for what they did than  
9 it was you sitting in judgment whenever you said, I do  
10 not sit in judgment of people?

11 A. The question originally was, did I have a moral  
12 or religious reason why I couldn't?

13 Q. Right.

14 A. And I do not have a moral or religious reason  
15 why I could not sit in judgment.

16 Q. Right. And if -- it says, I do not sit in  
17 judgment of people. Their actions speak for themselves.

18 A. I don't assume anything about a person before I  
19 get to know them personally.

20 Q. You wait and see what the evidence shows?

21 A. Any relationship, I just take a person as I  
22 see -- as I meet them. And they're fine with me unless  
23 something else is proven.

24 Q. Right. Now the question about, In your  
25 opinion, what's the best argument against the death

65

1 penalty? You said, When the law is not carried out  
2 fairly without respect of a person, and then when all  
3 possible rehabilitation has not been tried. Do you  
4 think a person who is found guilty of a violent crime,  
5 such as taking another person's life -- do you think  
6 they are as easily rehabilitated as someone who does a  
7 robbery, or something like that, like your husband's  
8 nephew?

9 A. Not necessarily. You have people that you say,  
10 like my nephew, that probably committed just -- I mean,  
11 a robbery may be more difficult or just as much  
12 difficulty being rehabilitated as someone who commits a  
13 murder.

14 Q. Okay. One of the issues in the capital murder  
15 case, if you found someone guilty of capital murder,  
16 then you go to Issue Number One. It says, Do you find  
17 from the evidence beyond a reasonable doubt there is a  
18 probability that the defendant would commit criminal  
19 acts of violence that would constitute a continuing  
20 threat to society?

21 So, basically, you're asking to determine  
22 from the evidence at the trial, as well as evidence you  
23 may have heard about at the punishment stage, where you  
24 hear about a defendant's character, his background, his  
25 criminal history, or lack thereof. And let's say,

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1 hypothetically, during -- if, after you hear all the  
2 evidence, you found a person guilty; so we know that's  
3 never going to change. We're just talking about what  
4 punishment you'd receive.

5 Issue Number One. You can look at the  
6 past and say, well, the guy's been in trouble before,  
7 but they really never tried to rehabilitate. He's never  
8 been sent to programs or given opportunities for  
9 somebody to teach him to turn his life around or  
10 whatever. Do you think that's a fact, in making a  
11 decision on Issue Number One, that a person hasn't been  
12 given programs or whatever, a chance to rehabilitate  
13 himself?

14 A. You mean, based on evidence that we have on a  
15 particular case, would you consider that at that time?

16 Q. Well, do you think if a person has not had an  
17 opportunity for rehabilitation, that that would be a  
18 factor in determining in your mind whether or not this  
19 person would be a future danger?

20 A. If that person, himself, would be a future  
21 danger?

22 Q. Right.

23 A. To himself or to the society?

24 Q. To society.

25 A. Would I consider that evidence that I've heard?

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1 Q. No. You hear the evidence. You say, This guy  
2 has never been given a chance to rehabilitate. He's  
3 never been given any programs, boot camp or drug  
4 programs, or given any type of rehabilitation program.

5 Okay. What effect does that have, knowing  
6 that he hasn't been given that opportunity, on your  
7 decision as to whether or not you think he might be a  
8 continuing threat in answering Number One?

9 A. I'm sure I would consider it. I would consider  
10 it. I'm not sure which way -- how much effect it would  
11 have.

12 Q. All right. Do you think everybody is  
13 rehabilitatable?

14 A. Not necessarily, no. I don't know.

15 Q. There is some agree/disagree questions on the  
16 back of the questionnaire, and I just want to go over  
17 some of those. You checked you agreed on 2, and that  
18 is: We must have the death penalty on some crimes, and  
19 the death penalty is just and necessary.

20 Another question is: The death penalty is  
21 absolutely justified. And you checked that you  
22 disagreed with that. Can you tell me what your thoughts  
23 were on that?

24 A. Read the question again for me, please.

25 Q. It's a statement. It says, The death penalty

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1 A. I think the law, as it is, is probably more  
2 fair.

3 Q. Okay. All right. Thank you, ma'am. I  
4 appreciate your time.

5 MR. MCCLELLAN: And I'll pass the witness.

6 THE COURT: Thank you.

7 Mr. Hill.

8 VOIR DIRE EXAMINATION

9 BY MR. HILL:

10 Q. Hi, Miss Prince. How are you? My name is  
11 Wayne Hill. Kurt Wentz and I both represent Mr. Mamou.  
12 And I'm going to ask you a few questions, if I may. Mr.  
13 McClellan has been pretty comprehensive. He's gone  
14 through a lot of the stuff. I think you can appreciate  
15 that looking at the circumstances from a defense  
16 perspective causes us perhaps to have maybe a different  
17 view of things, and I might want to ask you some  
18 different questions.

19 So, let me ask you this: What goes  
20 through a person's mind? You, specifically when you  
21 were contemplating coming down here and possibly being  
22 chosen to sit on a capital murder case, where if you  
23 find a person guilty of capital murder, you have to  
24 decide whether they live or die. Because that's  
25 essentially what you're going to do in answering these

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1 is absolutely justified. And you said you disagree with  
2 that. Can you tell me what your thoughts were there?

3 A. I think I was thinking about, depending on the  
4 evidence and the crime.

5 Q. Another one says, The death penalty gives the  
6 criminal -- a criminal what he deserves as applied  
7 today. You said you disagree with that.

8 A. Read the question again.

9 Q. Okay. The death penalty gives a criminal what  
10 he deserves as applied today?

11 A. And I checked what?

12 Q. You checked you disagree.

13 A. I'm not sure I understand the question. I'm  
14 not sure what I was thinking at the time.

15 Q. There is one you didn't answer, which says:  
16 The death penalty should be available as punishment for  
17 more crimes than it is now.

18 A. I didn't answer, because I didn't know what --

19 Q. What it was available for?

20 A. Yeah.

21 Q. The death penalty, as you now know, is not  
22 available for murder. It's available only for murder  
23 plus some aggravating circumstance. Some people think  
24 it ought to be available for murder. What is your  
25 thought?

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1 questions. What goes through a person's mind, if  
2 anything?

3 A. I feel like it is my duty to serve if I'm  
4 chosen.

5 Q. Okay.

6 A. As a citizen, that's something that -- I mean,  
7 I don't regret having to come. Of course, I have to  
8 consider my family and my work status; but I feel like  
9 as a citizen, that that's something I should do.

10 Q. I notice that you got to serve on a previous  
11 jury, but that the case -- I couldn't tell whether the  
12 jury was dismissed or if the case was dismissed. Do you  
13 remember serving on a criminal jury several years ago?

14 A. I remember being chosen on two cases. I think  
15 one was a civil case that got settled.

16 Q. Okay.

17 A. And the criminal case, I'm not sure what  
18 happened; but we didn't have to serve.

19 Q. Did you get to sit in the twelve chairs?

20 A. No, we --

21 Q. Because it was a large panel?

22 A. No, we were off the panel. We had made it away  
23 from the panel. We were going to go in, and we never --

24 Q. So maybe that case settled, also?

25 A. I assume it was settled.

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1 Q. Tell me a little bit about your church  
2 attendance. It looks like you're very involved in your  
3 church affairs. Tell me what you do.

4 A. Well, I've grown up in the church, you know,  
5 and I'm pretty active. I am active. Choir member,  
6 participate in the youth organization as a youth  
7 advisor/counsel, a Sunday schoolteacher, work with the  
8 women's organization.

9 Q. Pretty involved?

10 A. Uh-huh.

11 Q. What type of youth activities do you perform,  
12 and was there an outreach program? Is there summer  
13 camps? What type of things do you do with youths?

14 A. We do have a summer camp where we go with  
15 teenagers up until about fourteen or fifteen years old;  
16 and we give them activities, Bible studies, something  
17 during the summertime.

18 Q. Okay.

19 A. Our youth group also has a mission to feed the  
20 hungry from time to time, things like that.

21 Q. Pretty fulfilling?

22 A. Yes, uh-huh.

23 Q. Do you know whether or not your church has a  
24 particular view regarding the death penalty?

25 A. As a church, no.

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1 to have you on the jury? And if so, why?

2 A. If you're making an error.

3 Q. Yes.

4 A. I wouldn't think so.

5 Q. Okay. All right. So why am I not making an  
6 error?

7 A. I think I would not let myself be influenced.  
8 I would be fair and listen to the evidence and make my  
9 decision based on the evidence.

10 Q. All right. You said that you wouldn't let  
11 your -- did you say you wouldn't let your prejudice --

12 A. Any prejudice?

13 Q. Any feeling you have?

14 A. Yeah.

15 Q. Everybody has feelings.

16 A. Right.

17 Q. There might be -- are there any cases you can  
18 think of -- we're not talking about capital murder. Is  
19 there any kind of case where if you were called down to  
20 sit on a jury, you would have to raise your hand and  
21 say, I can't be a fair juror, because of maybe the  
22 nature of the case? Maybe it involved children.  
23 Whatever it might be, do you think there is any case  
24 where you couldn't sit and be a fair juror?

25 A. Nothing comes to my mind.

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1 Q. Okay. Each congregant is left to his or her  
2 own feelings regarding that.

3 A. Yes.

4 Q. If I'm asking you -- and understand that as a  
5 defense lawyer, I'm charged with the responsibility of  
6 representing this man, who the State is going to try and  
7 prove committed two murders. Because one of the  
8 allegations is that he is charged with taking the life  
9 of a man and a woman during the same transaction.

10 If that is true, if you find there is no  
11 legal defense to that, it didn't occur in self-defense,  
12 it wasn't an accident, it wasn't somebody else, your  
13 responsibility under the law would be to find him guilty  
14 of capital murder. And then the only decision you would  
15 be left with is determining the answer to those two  
16 questions, the answers to which will either decide life  
17 or death.

18 I'm a defense lawyer sitting here. I've  
19 not met you before. I'm going to have maybe twenty  
20 minutes to visit with you and try to evaluate, as the  
21 State will be evaluating, whether you're somebody that  
22 should ultimately serve with eleven other people. So I  
23 ask you to look inside, whatever makes you tick, whoever  
24 you are, and tell me whether or not, as a defense  
25 attorney, am I making an error in judgment if I choose

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1 Q. The law does not require anybody to serve as a  
2 juror. The law requires that if you take the oath of a  
3 juror, you'll follow the rules that the Court gives for  
4 you?

5 A. Uh-huh.

6 Q. And when you are deliberating with eleven other  
7 people, the Judge will give a set of instructions that  
8 guides you. You're going to determine what the facts  
9 are or what the facts are not. And then again, somebody  
10 should be held criminally responsible for the conduct  
11 that's alleged against them. Do you have any hesitation  
12 being able to sit and listen to all the evidence and  
13 make whatever decision you think is appropriate, given  
14 the facts and law?

15 A. I don't have a problem with that.

16 Q. If you had an opportunity to say, I definitely  
17 want to serve on this jury, or I would rather not serve  
18 on this jury, or somewhere in between, where do you  
19 think you would lie?

20 A. Somewhere in between.

21 Q. Okay. You said you enjoy watching "The  
22 Practice"?

23 A. Uh-huh.

24 Q. Do you think it's realistic?

25 A. I don't know. You know, I don't know that it's

75

1 realistic. I don't think that it's probably realistic.

2 Q. Okay. Do you find any of the shows that you've  
3 seen especially disturbing from the standpoint of what  
4 type of issues the defense attorney would have to  
5 confront while representing somebody?

6 A. I don't remember anything in particular.

7 Q. You just find that it's a good show; they seem  
8 to have a pretty good script?

9 A. Yeah, yeah.

10 Q. Tell me a little bit about your son. He's  
11 seventeen, goes to H.S.P.V.A. What area?

12 A. He's instrumentalist. He likes the base  
13 instrument. He plays in a jazz band. He also plays at  
14 church, and they have a little group that goes around  
15 and plays. He's -- I think he's talented.

16 Q. Is that what he would like -- would he like to  
17 be a musician as a job?

18 A. He says he wants to be a veterinarian.

19 Q. That means he's going to have to back Aggies?

20 A. He's almost, but I'm sure that his music does  
21 play an important role to him. I wouldn't want him to  
22 be a professional musician.

23 Q. But you would enjoy that he continues playing?

24 A. Yes.

25 Q. And maybe kind of as more of a hobby?

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1 Q. Any lasting impact about when your dad was in  
2 the fast food place when the robbery occurred? Was  
3 that discussed with the -- you and the other members of  
4 the family when it happened, or do you recall what your  
5 dad went through? Did he say what it was like being in  
6 there?

7 A. My dad didn't -- he wasn't really aware of what  
8 was -- he saw the circumstances. I mean, saw what was  
9 happening. And it didn't click to him what was going on  
10 until possibly it was about over.

11 Q. Okay.

12 A. And nothing really lasting effect on him or the  
13 family.

14 Q. Do you think your views on the death penalty --  
15 and let me explain to you that in order for a person to  
16 serve on a capital murder case in Texas, they have to  
17 believe in the death penalty. If somebody were to say,  
18 I don't believe in the death penalty, I'm going to let  
19 it interfere with my service; because even if I got on  
20 the jury, I would never vote for the death penalty. I'm  
21 telling you that up front, that person doesn't get to  
22 serve. So, necessarily the twelve people that are  
23 sitting in judgment of somebody are going to have a view  
24 that generally favors the death penalty. I'm looking  
25 for people that -- I'm trying to find out how strongly a

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1 A. Yes.

2 Q. I notice that for a while, it looks like you  
3 and your husband worked together in his business?

4 A. Yes, uh-huh.

5 Q. Was there anything in particular that caused  
6 you to work with him for three years? I notice you  
7 were at the Blood Center. Then you worked for three  
8 years with your husband, and he has since retired from  
9 business?

10 A. Right, uh-huh.

11 Q. Did he sell his business?

12 A. He had his business, but he was also working  
13 for a different company. And when he sold his business,  
14 he was still employed.

15 Q. And that was with Hormel?

16 A. Yes, uh-huh.

17 Q. So what do you do on a daily basis as  
18 audiological testing?

19 A. I work for a practice of five doctors, E.N.T.,  
20 ear, nose, and throat doctors. My particular job is to  
21 test for a hearing loss; and also, I do a particular  
22 vestibular function test for patients that have  
23 dizziness, vertigo, and imbalance problems.

24 Q. You enjoy what you do?

25 A. Yes.

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1 person views the death penalty, obviously trying to  
2 avoid those people that just say, hey, capital murder,  
3 that's it. Don't even bother me with these two  
4 questions, because what's the point? If somebody takes  
5 somebody else's life, they should pay with their own  
6 life. I need to know, where do you lie in the continuum  
7 of things? If zero was, "I'll never assess the death  
8 penalty," and ten were, "Every time I am finding  
9 somebody guilty of capital murder, they're getting the  
10 death personality," where do you think you might fall  
11 in that zero to ten range?

12 A. At a five.

13 Q. You feel like you could do it if you're  
14 absolutely convinced beyond a reasonable doubt that,  
15 number one, the person is guilty, and number two, that  
16 the answer to those two questions have to be answered in  
17 a way that results in the death penalty?

18 A. Uh-huh.

19 Q. Would you hesitate at all to answer those  
20 questions, based on the evidence, in a way that gave a  
21 life sentence, and then have to have some concern that  
22 you might have to face questioning by your friends, your  
23 family, your neighbors about, God, how could you have  
24 done that? We read in the paper that it was a horrible  
25 crime. How could you give somebody life for something



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1 like that? Do you think you would allow that kind of  
2 an outside influence to affect your decision-making  
3 process in this courtroom?

4 A. You mean, after the trial was over?

5 Q. No, as you're sitting there trying to make a  
6 decision, you're saying, Gees, somebody is going to  
7 question me about this?

8 A. No, I don't have a problem with that.

9 Q. You have the type of strength of character  
10 that, I will do what I believe the evidence and the law  
11 requires?

12 A. Right.

13 Q. Not that it requires you to do; but I'm  
14 comfortable with my decision, because I have evaluated  
15 everything completely?

16 A. Right. Also, people wouldn't know what I  
17 heard, the evidence I was given.

18 Q. And in all fairness, what you read in the  
19 newspaper probably never bears any resemblance as to  
20 what takes place during an entire day of testimony.

21 A. No.

22 Q. Do you have any questions of me?

23 A. No.

24 Q. So you'd like to be invited back to serve on  
25 the jury?

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1 to watch it. Anything about the case in the newspaper,  
2 refuse to read it. Anything about the case on the  
3 radio, refuse to hear it. And the reason, Miss Prince,  
4 for each of those restrictions is for the purpose of  
5 trying to accomplish the same objective, and that's  
6 this: If you do become a juror in the case, the  
7 decision you reach, whatever it is, must be based only  
8 on what you hear from inside the courtroom. Your  
9 decision cannot in any way be influenced or affected by  
10 what you might hear away from the courtroom.

11 If you need anything for the folks at work  
12 to show them where you have been for what is now the  
13 three days you've been with us, that will take care of  
14 it. This is a reminder note as to where and when we  
15 want you to be on the 29th of September. We want you to  
16 be right outside this door, where you were this morning,  
17 by 9:30 on Wednesday, the 29th. If we can get everybody  
18 here and if we can get started at 9:30, we'll all be  
19 through by noon.

20 Before you leave, do you have any  
21 questions for me?

22 VENIREPERSON: No.

23

24

25

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1 A. Not necessarily.

2 Q. Okay. Thanks.

3 THE COURT: Miss Prince, in just a second  
4 I'm going to excuse you. Before I do, I'm going to tell  
5 you, you're invited back. We want you back on  
6 Wednesday, the 29th of September, which is two weeks  
7 from yesterday. What we're doing is, we are talking to  
8 folks individually for the purposes of creating a panel  
9 of people, every one of whom will be back here on the  
10 29th of September, every one of whom will have been  
11 through exactly what you've been through. On that day  
12 we may spend as much as a couple of hours with you.  
13 Won't be a long time, but everybody will leave here that  
14 day knowing definitely whether they were or are not a  
15 juror in the case.

16 Between now and when we see you next,  
17 don't you change your schedule one bit for us. You do  
18 your professional things just like you ordinarily do  
19 them. Do your personal things just like you do them.  
20 All that we ask of you between now and when we see you  
21 next is don't talk about this case with anybody. Do not  
22 permit anybody to talk about this case with you.

23 If there is any news media treatment about  
24 this case between now and when we see you next, avoid  
25 it. Anything about the case on the television, refuse

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1 SUZETTE YVETTE BARR,  
2 having been first duly sworn, testified as follows:

3 VOIR DIRE EXAMINATION

4 BY THE COURT:

5 Q. How are you today?

6 A. I'm fine.

7 Q. Miss Barr, first off, I ask you to remember  
8 back to Monday, when the group was together here, and  
9 the things we talked about, and this morning, the things  
10 we talked about this morning. Out of everything we have  
11 talked about up to this point, do you have any questions  
12 at all for me?

13 A. Huh-uh.

14 Q. Is there anything up to now that we have not  
15 yet addressed, not yet touched on, that you feel as  
16 though we should because it might have some bearing on  
17 your service as a juror?

18 A. No.

19 Q. Is there anything at all, whether it might be  
20 something perhaps about your professional life,  
21 something about your personal life, something about your  
22 health, or anything else that you can think of that, in  
23 your mind, would in any way interfere with your ability  
24 to be a juror in this case during the time frame we  
25 talked about --

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1 A. Huh-uh.

2 Q. -- rules that we've heard about as we've  
3 talked about so far? Have you heard anything at all  
4 about any of them that rises to the level and causes you  
5 some discomfort? If you were a juror, could you  
6 enforce, as well as follow them?

7 A. Uh-huh.

8 Q. The fact -- the idea about making a decision in  
9 the case based upon whatever evidence you hear, does  
10 that sound like you?

11 A. Uh-huh.

12 Q. No precommitted idea as to what you're doing?

13 A. Uh-huh.

14 Q. You're going to have to use words. We all know  
15 what you're saying.

16 A. Sorry.

17 Q. Do you have any questions about the idea that  
18 just simply because you find somebody guilty of capital  
19 murder, and for that reason alone, that doesn't mean  
20 punishment should necessarily be imposed?

21 A. No.

22 Q. That life is equally an option as death?

23 A. Uh-huh, yes.

24 Q. Whatever decision should be made would be made  
25 upon the evidence in a given case?

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1 A. Uh-huh. Yes, I'm sorry.

2 Q. And if after having heard the evidence in the  
3 case, if you found that the answer to this first  
4 question should be yes, are you still open to the fact  
5 that a life sentence may be the appropriate verdict in  
6 the case?

7 A. Still hoping?

8 Q. Are you still open?

9 A. Oh, I am.

10 Q. If somebody is found guilty of capital murder,  
11 which is obviously a horrible crime, and the evidence in  
12 the case is such that it influences a juror to believe  
13 that a person is also going to be a future danger to  
14 society, that means that they are death penalty  
15 eligible. The question is: Is there anything in the  
16 case that is a sufficient reason to substitute a life  
17 sentence for the death sentence? That's the second  
18 question. And you're still open to considering all the  
19 evidence in that regard?

20 A. Yes.

21 Q. So finding of guilt and finding of future  
22 danger would not automatically mean that in all cases  
23 you're going to answer that second question in such a  
24 way the death penalty is imposed?

25 A. No.

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1 Q. It would depend upon the facts?

2 A. Yes.

3 Q. Before we begin, have you any questions at all  
4 for me?

5 A. No.

6 THE COURT: Mr. McClellan.

7 VOIR DIRE EXAMINATION

8 BY MR. MCCLELLAN:

9 Q. Miss Barr, my name is Lyn McClellan. Along  
10 with Claire Conners, we represent the State of Texas in  
11 this case. I want to go over your questionnaire and go  
12 over some of your answers that you have there, and also  
13 talk to you about certain aspects of the law that might  
14 apply in a case like this and get your thoughts about  
15 that. When you filled out the questionnaire, you had  
16 not had the benefit of having the Judge's voir dire the  
17 other day, as well as today. And a lot of people,  
18 whenever they're asked about, you know, what do they  
19 think the punishment ought to be for someone killing  
20 somebody, they may just say that, I think (inaudible.)  
21 Because when you get to this point, though, and having  
22 listened to the voir dire and the prospect of being on a  
23 jury, you found out there could really be just lots of  
24 circumstances that constitute a murder case. Not every  
25 murder case is alike.

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1 There are obviously a lot of murder cases  
2 where a person's life may also be taken; but there are  
3 also facts and circumstances that suggest to you that  
4 maybe in the other cases where it is a murder case, but  
5 based upon the circumstances and the facts, that might  
6 not be the appropriate penalty. In your mind, are you  
7 open to the full range of punishment in a murder case,  
8 from as low as five years to as high as ninety-nine  
9 years, or life?

10 A. Yes.

11 Q. And the thing that a lot of people usually --  
12 or we've had people come in before that says, if you  
13 take someone else's life, you ought to get the maximum  
14 punishment. But what they're thinking about is a real  
15 horrible case, and what they're thinking about that  
16 probably would be the appropriate situation, not knowing  
17 there could be lots of other circumstances that still  
18 constitute murder. That may not be what they're  
19 thinking about. The job of a juror is to listen to all  
20 the evidence, and wait until you've heard it all and  
21 then give -- receive the law from the Court, and then  
22 you make your decision. Are you the type of person that  
23 could wait until you've heard all the evidence and  
24 receive the law from the Court before you make your mind  
25 up about either guilt or innocence or punishment?

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1 A. Yes.

2 Q. Now in your questionnaire that you had filled  
3 out, there is a question about -- I think it said, What  
4 is the best argument for the death penalty? And you  
5 said, If you choose to take a life deliberately, I feel  
6 yours should be taken away, too, which basically  
7 translates, in other words, into an eye for an eye. In  
8 other words, if you kill somebody, your life ought to  
9 also be taken.

10 Now that you know what the law is and  
11 there is no automatic death penalty for any particular  
12 case, instead you have to go through a different process  
13 to make those type of decisions, and there may be cases  
14 where someone takes someone's life in a capital murder  
15 situation where life imprisonment is an appropriate  
16 punishment. Are you open then to answering these  
17 questions in such a way that either life or death could  
18 result, and you just wait and see what the facts show?

19 A. Yeah.

20 Q. Some people come in and say they have a  
21 preconceived idea or preconceived notion. And if you  
22 have a strong belief that it should be an eye for an  
23 eye, that's okay, as long as they can set it aside and  
24 follow what the law and the evidence is. Every juror  
25 we're going to ask to take an oath, and that oath will

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1 to walk up to someone on the street without any other  
2 person around, put a gun to somebody's head and shoot  
3 and kill them, that is murder; and the death penalty  
4 does not apply. Any problem with -- in that type of  
5 case where someone, you know, disregards a human life  
6 and takes someone else's life?

7 Range of punishment is from five years to  
8 ninety-nine years, or life. Death penalty is not  
9 available. Are you still open to that full range of  
10 punishment in that type of case?

11 A. Uh-huh.

12 Q. That's what the law is. So what we're looking  
13 for are people who have not made up their mind about any  
14 aspect of the case. And, of course, that may sound  
15 silly, because you haven't heard any of the facts. How  
16 could you make your mind up about it? But I guess some  
17 people may react to say, If a person's been found guilty  
18 of capital murder, what punishment should he receive?  
19 And I hope that you would respond, Well, what's the  
20 evidence? You know, what about the crime and the  
21 individual? Are you comfortable with the fact that you  
22 cannot tell me what punishment ought to be received for  
23 capital murder --

24 A. Yeah.

25 Q. -- without knowing it?

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1 be to a true verdict render based upon the law they get  
2 from the Court and the evidence they hear in the  
3 courtroom. Would you be able to take that type of oath?

4 A. Yeah.

5 Q. Let me ask you this: What types of cases come  
6 to your mind when you think of cases where you think the  
7 death penalty ought to be available as a form of  
8 punishment?

9 A. Type of cases like a mass murder, what happens  
10 when somebody goes in and shoots people in the post  
11 office, or place of work, or take a life intentionally  
12 for no apparent reason, just because.

13 Q. Okay. And, of course, mass murder, that would  
14 be capital murder. And taking someone's life without  
15 any reason, intentionally taking their life without any  
16 reason, that is murder and not capital murder. Because  
17 for it to be capital murder, where the death penalty is  
18 available, it must be murder, which is always an  
19 intentional taking of another person's life -- that's  
20 murder; we're not talking self-defense; we're talking  
21 about intend to kill somebody -- but that's not capital  
22 unless it's coupled with another felony. Murder during  
23 a kidnapping is one of the things we have alleged here.  
24 Murder of two or more people in one criminal episode is  
25 another thing we have alleged here; but if someone were

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1 A. Yeah.

2 Q. Okay. I wanted to talk to you for a moment  
3 about the punishment stage of a capital murder case,  
4 and that's different from the punishment stage of any  
5 other crime. Because here, instead of a range of years  
6 like you have in a murder case, you have questions. And  
7 depending upon the answer to the questions tells the  
8 Judge what punishment he must assess. Keep in mind  
9 that you never get to those questions unless you have  
10 found someone guilty of capital murder. And capital  
11 murder is the intentional taking of another person's  
12 life without any legal justification. We're not talking  
13 accident. We're not talking self-defense during the  
14 course of a kidnapping, or killing two or more people in  
15 one criminal episode.

16 Okay. Having found that, you then go to  
17 the punishment stage of the trial. At that stage, you  
18 may hear additional evidence about a defendant's  
19 character or background, their criminal history or lack  
20 thereof, their mental abilities, disabilities, all kinds  
21 of information about the individual, himself, that may  
22 help you in deciding the answer to these questions.

23 So when you go to answer the questions,  
24 you have two bodies of knowledge to draw from. One is  
25 the information you received at the guilt/innocence

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1 stage of the trial, where you found someone guilty of  
2 capital murder. And two is evidence about the  
3 individual, himself, that you heard at the punishment  
4 stage of the trial. All that can help you in answering  
5 these questions.

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6 Okay. First question says: Do you find  
7 from the evidence beyond a reasonable doubt? First of  
8 all, that tells you, when it says beyond a reasonable  
9 doubt, the burden is on the State of Texas. But there  
10 is a probability. And it doesn't say possibility,  
11 because anything is possible. Doesn't say certainty.  
12 It says a probability, more likely than not, that the  
13 defendant would commit criminal acts of violence.  
14 Doesn't say another murder or capital murder, although  
15 those are obviously criminal acts of violence. Could be  
16 a robbery. Could be a burglary. Could be shooting  
17 someone with a gun who does not die. It could be  
18 hitting someone with your fist so hard you knock them  
19 out. It could be anything that's criminal and violent  
20 in nature that would constitute a continuing threat to  
21 society.

93

22 So, basically what you're asked to do is  
23 go back and listen to the evidence both about the crime  
24 and about the individual. And do you find that, based  
25 upon all that evidence, the State has proven beyond a

93

1 Q. For example, you may -- when you look at a  
2 person's character and background, you may find they're  
3 a straight A student, an Eagle Scout, a choirboy, never  
4 been in trouble with the law before. This act of  
5 capital murder, which is heinous in and of itself, was a  
6 total aberration from the rest of his life. You didn't  
7 expect them to do that. And now, further looking, you  
8 wouldn't expect them to do anything like that ever  
9 again. There may have been circumstances that arose  
10 that caused them to do it. Doesn't exonerate them from  
11 committing the crime, but those circumstances may be  
12 helpful in deciding that he would not be a continuing  
13 threat. Okay. In other words, in extremes there may be  
14 somebody that's been in and out of trouble all their  
15 life; and you figure this is just a stepping stone along  
16 the way to their graduate degree in criminology, but  
17 they're going to always be a threat from now on. So,  
18 are you comfortable with the idea that when you -- just  
19 because you find someone guilty of capital murder, you  
20 still have to look at Issue Number One and the State  
21 still has to prove that there is at least a probability  
22 that this person would be a continuing threat to commit  
23 future acts of violence?

94

24 A. Yeah.

95

25 Q. You don't answer yes just because you found

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1 reasonable doubt there is at least a probability that  
2 the defendant would commit criminal acts of violence  
3 that would be a continuing threat to society? Do you  
4 think you would be able to answer that question either  
5 yes or no, depending on what the facts may show?

93

6 A. Yes.

94

7 Q. Do you see that there are certain cases, just  
8 because you found someone guilty of capital murder --  
9 because you don't ever get to that question unless --  
10 the fact that you found someone guilty of capital murder  
11 does not always dictate what the answer would be. I  
12 mean, there may be cases that are so bad that when you  
13 found them guilty, that was also enough evidence to  
14 answer Issue Number One yes.

95

15 But there may be other cases where finding  
16 him guilty was not sufficient to answer that yes. And  
17 when hearing all the evidence about character and  
18 background, there still wasn't sufficient evidence to  
19 answer that yes. See, some people, I think, get the  
20 misimpression that if you find a person guilty of  
21 capital murder, that you always would find that he's a  
22 continuing threat to commit future acts of violence.  
23 And that's not always the case. Are you comfortable  
24 with that proposition?

96

25 A. Yeah.

94

1 them guilty of capital murder.

95

2 A. No.

96

3 Q. If you answer that question yes, then the  
4 defendant's going to receive a death penalty, unless you  
5 decided on Issue Number Two that there is some reason or  
6 reasons he should not. And that question basically asks  
7 you to go back and look at all the evidence again. In  
8 fact, it says, Do you find that, taking into  
9 consideration all of the evidence, including the  
10 circumstances of the offense -- that would be what you  
11 heard at guilt/innocence -- and background of the  
12 defendant -- that would be what you heard at  
13 punishment -- and the defendant's personal moral  
14 culpability -- I'd like to refer to it as his personal  
15 responsibility for the commission of the crime. What  
16 were the acts that he did that helped cause this crime?

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17 Do you find there is sufficient mitigating  
18 circumstance or circumstances -- I'd like to refer to it  
19 as sufficient reasons -- why that person should receive  
20 life as opposed to death? It gives you the opportunity  
21 to change your vote of death to life if you find there  
22 are reasons in the testimony that you heard, whether it  
23 be guilt or innocence, or whether it be punishment, or  
24 wherever it may be, it gives you the opportunity to give  
25 that person a break, make sure the death penalty is what



95

1 you want to do; and if you're not sure that's what you  
2 want, then you give him a life sentence. Any problem  
3 with that aspect of the law?

4 A. No.

5 Q. Some people come and say, well, if I have found  
6 someone guilty of capital murder, intentionally killing  
7 someone without a legal justification during the course  
8 of a kidnapping, or killing two or more people during  
9 one criminal episode, then if I further went on and  
10 found there is a probability beyond a reasonable doubt  
11 that that person would be a continuing threat to commit  
12 future acts of violence, you know, I along think -- I  
13 mean, I'll never think there is some reason to change my  
14 vote from death to life. And I don't know whether it  
15 will be or not, but what Issue Number Two commits you to  
16 do is to search; and in looking for it, to go back  
17 through that evidence and weigh it in your mind.

18 For example, you may go back and look  
19 through the evidence in Issue Number Two and remember  
20 that, well, I remember during the trial they said the  
21 defendant was high on drugs or alcohol when he committed  
22 the crime. Juror Number 1 may say, I believe that  
23 mitigation warrants a life sentence; because when you're  
24 high on drugs or alcohol, you do things you wouldn't  
25 ordinarily do. Juror Number 2 may say, Wait a second.

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1 That doesn't have anything to do with it. I know people  
2 who get high on drugs or alcohol every week, and they  
3 don't go out and commit capital murder. I don't see any  
4 connection there. Two people can look at the evidence,  
5 same piece of evidence, and come up with different  
6 opinions. That's okay, because that's what the  
7 questions asks you to do, for you to look at the  
8 evidence, for you to weigh in your mind, and for you to  
9 decide what effect it should have. Any problem with  
10 that aspect?

11 A. No.

12 Q. Same thing when you look back at the evidence.  
13 You may find the defendant was a young man. Somebody  
14 may say, well, you know, I think his youth is a  
15 mitigating factor; because when we're young, we do  
16 things that are stupid. We do things we look back on  
17 and say, why in the world did I do that when I was that  
18 age? As you get older, you get more mature. Somebody  
19 else may think it's mitigating. Somebody else may say,  
20 well, wait a minute. At this age, he's already  
21 committed a crime. What makes you think he won't do  
22 something worse down the road? Same thing with mental  
23 disabilities. Somebody may think that's mitigating.  
24 Somebody may say, I know other people who have the same  
25 disabilities this person has, but that doesn't -- they

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1 don't go out and commit these types of crimes. I don't  
2 think there is any connection between that and the  
3 commission of this crime; and thus, I don't think it's  
4 mitigating.

5 All that is to say that Issue Number Two  
6 commits yourself that you'll go back and look at all the  
7 evidence. Stop and reevaluate everything. Make sure  
8 the decision you've arrived at is the one you're going  
9 to stay with. And if it is, you say, no, there are no  
10 mitigating circumstances that deserve life as opposed to  
11 death. If you find that there is circumstances where  
12 you ought to change that vote, then you say, yes, there  
13 are circumstances this person ought to get life as  
14 opposed to death. See how that works.

15 A. Uh-huh.

16 Q. Any problem with you going through that process  
17 and making that type of decision?

18 A. Nope.

19 Q. If you had already found some -- hypothetically  
20 already found someone guilty of capital murder, and then  
21 you found them be a continuing threat to commit future  
22 acts of violence, at least to a probability, are you  
23 still open to going through and looking to see if there  
24 is anything that's mitigating?

25 A. Yeah.

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1 Q. I mean, I don't know whether you'd find it or  
2 not. And I suggest you wouldn't know, either, until you  
3 heard what the facts and circumstance were, and they'll  
4 all be different. The State of Texas is seeking the  
5 death penalty in this case. We're going to seek to  
6 commit jurors -- to convince jurors beyond a reasonable  
7 doubt that the defendant is guilty of capital murder,  
8 and we're going to seek to convince jurors that Issue  
9 Number One ought to be answered yes and Issue Number Two  
10 ought to be answered no, such that the death penalty  
11 would result. If the law and the evidence convinces you  
12 that it ought to be that way, is there any reason you  
13 could not vote that way?

14 A. No.

15 Q. If the law and the evidence didn't convince you  
16 that it ought to be that way, is there any reason you  
17 could not find the defendant not guilty? Or if you  
18 found him guilty, is there any reason you couldn't find  
19 that life is appropriate if you thought that's what the  
20 law and the evidence called for?

21 A. No.

22 Q. You indicated that you know someone who's been  
23 sent to prison. Said, broke probation, possession of an  
24 illegal substance, and I think he's still in high  
25 school. Who was that?

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1 A. My best friend's father.

2 Q. Your --

3 A. Best friend's father, or stepdad.

4 Q. And that person went there for drugs?

5 A. Yes.

6 Q. And how has that affected your best friend?

7 A. Well, she knew basically about her dad; so, you  
8 know, she goes and sees him. I haven't seen him; but  
9 she goes and sees him, and she takes her kids. So, you  
10 know, she knows what's right and wrong. I don't think  
11 it's really affected her bad.

12 Q. Indicated that you had -- your cousin's ex-wife  
13 was murdered in Dallas?

14 A. Uh-huh.

15 Q. How long ago was that?

16 A. About two years ago.

17 Q. Was anybody ever prosecuted for that?

18 A. Not to my knowledge, no.

19 Q. Would that have any effect on you being a juror  
20 in a case like this?

21 A. No.

22 Q. Back on the questionnaire there was a question  
23 that says -- it's not a question -- a statement which  
24 asks, do you agree or disagree? Do you agree with this  
25 statement: Any person, man or woman, young or old,

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1 process. Says, Do you believe mitigating evidence  
2 concerning a capital murder defendant's background  
3 should be considered in deciding whether or not he or  
4 she should receive the death penalty? And you checked  
5 no. Now you understand that the question up there  
6 directs the jury to look at mitigating evidence. Did  
7 you know what they meant by mitigating evidence?

8 A. No.

9 Q. I think a lot of times people look at that as  
10 meaning like excuses for someone's conduct ought to be  
11 considered.

12 A. Uh-huh.

13 Q. Mitigating conduct does not mean excuses;  
14 because it does not excuse the conduct, because you've  
15 already found a person guilty. Mitigating evidence  
16 determines what punishment you're going to get, either  
17 life or death. It's never going to undo your finding of  
18 guilt, and that's when it comes into effect. Mitigating  
19 evidence does not come into effect on guilt/innocence,  
20 only at the punishment stage. And you would be able to  
21 consider that and look at that like the law requires you  
22 to?

23 A. Yeah.

24 Q. Any questions you have of me?

25 A. No.

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1 who's guilty of capital murder should pay with their own  
2 life. Okay. You said you agreed to that.

3 Some people interpret that to mean the  
4 death penalty ought to apply whether you're a man or a  
5 woman, whether you're young or old, though necessarily  
6 it should be a factor that ought to be applied equally  
7 across the board. But somebody else could interpret  
8 this to mean any person; because everybody is either a  
9 man or a woman, everybody is either young or old. That  
10 means any person guilty of capital murder ought to get  
11 the death penalty every time. Is that what you believe,  
12 that every person guilty of capital murder ought to get  
13 the death penalty every time, regardless of the  
14 circumstances?

15 A. No, I don't even think I seen that question as  
16 that way. I think they should pay with their life, and  
17 not to take their life away. It could either be they  
18 need to spend life in prison.

19 Q. That's another way of looking at it, also;  
20 because there is only two punishments, and the person --  
21 you now know that life means at least forty years, day  
22 for day. So the person is -- most likely it would be a  
23 person's natural life.

24 There is also a question -- and, of  
25 course, this is before any of the voir dire or the

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1 Q. All right. Thank you very much.

2 MR. MCCLELLAN: And I'll pass the juror.

3 THE COURT: Mr. Hill.

4 MR. HILL: Thank you, Judge.

5 VOIR DIRE EXAMINATION

6 BY MR. HILL:

7 Q. Hi, Miss Barr. How are you?

8 A. Fine.

9 Q. So far I've heard you say yes and no to a lot  
10 of questions that have been posed to you; and I've heard  
11 a lot of comments made to you about, this is what the  
12 law requires, and you'd follow the law, and the law  
13 requires you to do this, and you could do that. But I  
14 haven't heard how you feel about things. I think I had  
15 a fairly good idea of what your thoughts were when I  
16 read your questionnaire. Do you think that the  
17 questionnaire gave an opportunity to express your views  
18 on the different issues we've discussed?

19 A. I think so.

20 Q. Okay. Like you said, that if a person  
21 deliberately takes the life of another person, their  
22 life should be taken away, too. Is that a fairly  
23 succinct statement of your beliefs regarding somebody  
24 who commits intentional murder?

25 A. Yeah. I guess -- how did I phrase it? What

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1 I'm saying when I say take their life, they should give  
2 their life. It's not always going to be they're going  
3 to die if they're dead. I guess what I'm saying is  
4 taking their life away means their life, as in their  
5 freedom to choose this, you know, through their Bill of  
6 Rights, their right to do their life. And that's the  
7 way I foresee that. And not so much as whether they  
8 should be killed, but just as, you know, they should  
9 have their lives, as I see it, taken away.

10 Q. Okay. See, it's important to ask people  
11 questions on those, and I like to ask questions. I hope  
12 that you don't feel like I'm prying or kind of getting  
13 too personal; but obviously, Mr. Wentz and I have a  
14 tremendous responsibility.

15 This young man sitting here is charged  
16 with killing two people at the same time, or  
17 alternatively, that he kidnapped somebody and killed  
18 them. I can't think of a more serious allegation being  
19 brought against somebody; so I can't just rest on a  
20 person's comments that, yes, I'm following the law. I  
21 want to make sure you understand what it is that the law  
22 requires versus what you feel.

23 A. Uh-huh.

24 Q. The law can't make you feel a certain way. As  
25 an example, if you were called to jury service up in

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1 I'm a good person. I could possibly be a good juror in  
2 any other case, but this one cuts a little too close to  
3 home. Or my feelings are so strong, I just don't feel  
4 like I can give you the best shot that I can. Do you  
5 have some cases like that?

6 A. I think crimes against children. I could  
7 probably be as objective as I could possibly be, but I  
8 don't think -- I think my beliefs and stuff, it would  
9 possibly hinder my decision.

10 Q. I think that's probably the single most often  
11 heard comment when asked that question. I don't think  
12 I've ever gotten a different response. It's always  
13 having to do with children because the sense of, they  
14 have no say in the matter. They are truly helpless.  
15 They are truly innocent victims, and somebody takes  
16 their life. There is no justification whatsoever, I  
17 guess, unless there was an accidental situation.

18 Now you answered the question -- it asked,  
19 Do you believe that mitigation should be taken into  
20 consideration in deciding whether or not the death  
21 penalty should be received? And you did answer it no.  
22 What did mitigating mean to you as you were reading that  
23 question? Because obviously, you answered the  
24 question.

25 A. To be honest, I don't know. Some of that stuff

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1 Dallas -- see, a lot has been said about the law  
2 requires you to set aside your personal views and just  
3 look at the facts and the evidence in the case.

4 A. Uh-huh.

5 Q. And that sounds fair, and nobody wants to say  
6 anything that sounds like they're not going to be fair  
7 in a case. But would you agree with me that there might  
8 be some cases where you can't set aside the views that  
9 you have, that there is no way you can put them aside  
10 and sit and listen to a case? Do you think there is  
11 some cases where your views are so strong that you may  
12 not be able to set the views aside?

13 A. There might be. I don't know, but --

14 Q. I'll give you an example. It's a poor example,  
15 but imagine if you lived in Dallas. You got called down  
16 for jury service, and it turns out that the case on  
17 trial is one of your cousins. Now, there is no way in  
18 the world you would be able to sit there and honestly  
19 say, well, I can set aside any feelings I have. And  
20 that's a bizarre example. But what are some of the  
21 other types of cases that you might think about that  
22 might run through your mind that you feel like, you  
23 know, I just feel so strongly about a particular topic  
24 that, in all fairness, if I'm sitting on trial myself,  
25 I'd want the juror to raise their hand and say, look,

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1 was overwhelming, so a lot of it -- I mean, I tried to  
2 be as honest as I could; but there was a lot that was  
3 overwhelming.

4 Q. We throw a lot of questions out, and then we  
5 batter you around a little more when you're sitting up  
6 on the witness stand. Does mitigation sound like  
7 reasons to give the death penalty, such as a person's  
8 prior convictions, bad acts, things like that? Do you  
9 view mitigation more from the State's perspective, that  
10 it's reasons to give the death penalty; or do you see it  
11 as reason or reasons not to give the death penalty?

12 A. I see it as not to give the death penalty.

13 Q. Okay. Now I haven't asked you to specify a  
14 particular thing that you're always going to find to be  
15 mitigating. Mr. McClellan tried to kind of give you a  
16 suggestion of some things. And I heard him say that,  
17 Well, one juror may say it is mitigating, and another  
18 might say it's not mitigating. Any things that come to  
19 your mind that you would like to hear before you make a  
20 life or death decision? I mean, what kind of evidence  
21 do you think comes to your mind as possibly mitigating?

22 A. Honestly, I don't know. I mean, I really don't  
23 know.

24 Q. Do you think the circumstances of the crime  
25 itself that you have found somebody guilty of might play



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1 a role in deciding whether the person receives life or  
2 death?

3 A. Yeah, I think it might.

4 Q. Okay. Go a step further with me, if you will,  
5 and try to distinguish circumstances of a case that  
6 might suggest the death penalty versus circumstances of  
7 a case that might suggest life in prison would be  
8 appropriate.

9 A. Yeah.

10 Q. Could you think of any kind of scenario just  
11 floating out there that might suggest one versus the  
12 other? And if you can't, I understand.

13 A. To be honest, this is my first time I've ever  
14 done anything like this.

15 Q. Okay. Now one thing -- let me ask you this:  
16 If somebody were to ask you whether or not you see  
17 yourself as a fairly conservative person when it comes  
18 to law and order, would this be a fair assessment, that  
19 you would tend to be more conservative with regard to  
20 criminal justice issues?

21 A. Yeah, I would think so.

22 Q. Let's say you've just been elected to the House  
23 of Representatives for your district in Texas. There is  
24 two bills on the floor, and you're going to vote for one  
25 or the other. One bill says, For all people that commit

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1 capital murder, the automatic punishment is life in  
2 prison. The other bill says, For all people convicted  
3 of capital murder, the automatic punishment is death.  
4 In other words, we're not going to have this scenario  
5 anymore. Texas is now going to an either/or situation.  
6 And you're in the House of Representatives; and they  
7 call out, Suzette Barr, how do you vote? Which would  
8 you choose?

9 A. I couldn't. I couldn't choose.

10 Q. Okay. What would your argument be for either  
11 one of those? Like, would you -- what would your  
12 argument be for an automatic death penalty, if that's  
13 what the law was going to be?

14 A. Well, my argument, I guess, would be saying,  
15 you're assuming that all cases are the same. Everybody  
16 is going to be the same is the reason why you know as to  
17 why they killed or kidnapped, or whatever you're saying.  
18 Okay. That since Jane did this, that Joe did this, but  
19 it's different circumstances. They're all going to get  
20 the same sentence, and I don't think that's right. Each  
21 case should be accounted differently.

22 Q. So what do you do as a Legislator if, for some  
23 reason, the only two bills that are put on the floor for  
24 your consideration says it's always life or it's always  
25 death? How do you resolve that? Do you just abstain?

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1 A. Yeah, I would think I would just abstain.

2 Q. You don't get to abstain on the jury here.

3 A. I couldn't do it.

4 Q. You're going to have to cast your vote. And  
5 I'm not trying to trivialize this. I'm just trying to  
6 get some heartfelt thoughts that you have --

7 A. Uh-huh.

8 Q. -- so that I can sit there with Mr. Wentz and  
9 talk to him and say, here we have this woman who, among  
10 other things, initially said, I don't think mitigation  
11 should be considered in assessing life or death.  
12 Somebody has said -- some people -- Do not let the  
13 accused have an appeal. Stand your ground. What does  
14 that mean? That was one of the answers to the questions  
15 about the best way to achieve the purpose of, you know,  
16 addressing punishment and crime?

17 A. I think that if they were adequately defended  
18 and if the State prosecuted and they did get the truest  
19 punishment, I don't think they should be offered an  
20 appeal. If you did it and the evidence said you did it  
21 and, you know, this is how they, you know, the jury, you  
22 know, said you did. And I just don't think -- I think  
23 you should serve your time, and that should be okay.

24 Q. Let me ask you one question, because you made a  
25 very interesting comment at the very beginning of your

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1 answer. If the person was represented properly, if the  
2 State presented their evidence properly, and the jury  
3 concluded beyond a reasonable doubt, how would we know  
4 whether, like in one instance you wrote, you know,  
5 whether Mr. Wentz and I had done a proper job, if there  
6 is no appeal of that decision? Just kind of a  
7 philosophical question.

8 A. I guess when I say proper, I guess getting  
9 the -- actually, defend -- I mean, the people to give  
10 the evidence, the actual evidence, is to defend -- well,  
11 I don't have to defend his innocence, because he's  
12 automatically innocent. But if the State had the proper  
13 evidence to say that he's guilty, I mean, it was  
14 definitely clear that, yeah, you know, he was seen by  
15 five people doing this crime, and all these five people  
16 were not at the same, you know, same spot.

17 Q. They weren't the drunks that the Judge was  
18 talking about?

19 A. Yeah, and stuff. So, I think it could be, you  
20 know.

21 Q. Okay. Let me ask you one thing. Let me ask  
22 you first: Have you ever seen on TV, or read in the  
23 newspaper, some media source, of cases where twelve  
24 jurors got together, absolutely convinced beyond a  
25 reasonable doubt the person did it? May be given death;



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1 may be given life in prison; whatever it might be, five  
2 or ten years. And later evidence comes to light that,  
3 in fact, the person does not commit the crime, or that  
4 witnesses lied, or whatever. What do you feel when you  
5 see something like that in the media? Have you ever  
6 heard of such a case or seen anything like that?

7 A. I think there was a movie about it. I'm not  
8 sure. How would I feel?

9 Q. Yeah.

10 A. Stupid, especially if I was on that jury, if I  
11 was one of the ones. But then again, I did the best I  
12 could with what was given to me.

13 Q. Exactly.

14 A. And so, you know, I don't know. I may not. I  
15 don't know how I would feel. I may not feel either way.

16 Q. Okay. So, here I am. I'm a lawyer, along with  
17 Mr. Wentz, representing Mr. Mamou. He's charged with a  
18 horrible crime. You'd agree the allegation is terrible.  
19 I don't think anybody would disagree with that, anytime  
20 somebody's charged with the most serious crime.

21 I've got to speak to you for a short time.  
22 I've read your questionnaire. I heard what you said to  
23 Mr. McClellan when he was questioning you. I want you  
24 to put yourself in that chair for a moment as the  
25 defendant. You're my client, okay? And we're looking

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1 well, she doesn't have an argument against the death  
2 penalty at all.

3 I just want to ask you this: Are we clear  
4 on the fact that when we're talking about mitigation, we  
5 are not talking about a situation where somebody acted  
6 in self-defense, or it was an accident? Because what  
7 would have happened if that's what you believed the  
8 evidence showed? Tell me what you would have done if  
9 the evidence was presented to you by the State. Then  
10 after hearing all the evidence, you believed that either  
11 death occurred accidentally or the death occurred as a  
12 result of self-defense, that the person had a  
13 justification for taking somebody's life. What would  
14 the result have been in terms of your verdict?

15 A. Oh, it would definitely not have been the death  
16 penalty, no. It would have more than likely been life.

17 Q. Well, here's my problem with that. What about  
18 the guilt stage of the trial when you are trying to  
19 determine whether or not the person was guilty or not?  
20 Would that not have played a factor at that stage of the  
21 trial? In other words, if you felt the person --

22 A. Oh, yeah, oh, yeah; but that's not what you  
23 said.

24 Q. Okay. And maybe I confused my own question to  
25 you. What would your vote have been at any stage of the

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1 at your twin sister. Did you ever have a sister?

2 A. Huh-uh.

3 Q. So, the mirror image of you sitting on the  
4 witness stand. And we're saying, well, I wonder if  
5 she's told us everything. I wonder if there is anything  
6 we missed that we need to ask her, in all fairness. And  
7 you turn to me, as the defendant, and say, look, let me  
8 tell you why I either want to keep her or why I don't  
9 want to keep her. What would you tell me, being your  
10 defense lawyer?

11 A. Being my defense lawyer?

12 Q. Uh-huh, remembering that I'm essentially making  
13 the decision of whether to say yes or no on your sitting  
14 on this jury. So, you look deep inside of you right now  
15 for a moment and tell me what I should do.

16 A. I think you should pick me, because I can be  
17 open-minded to what's going on, and I think I could  
18 weigh the evidence equally and give the honest and best  
19 thing.

20 Q. One thing I want to be absolutely clear on,  
21 because a lot of people -- and I'm not singling you out,  
22 because everybody has struggled with this: We ask them,  
23 Are there cases where you think the death penalty is not  
24 appropriate? And I notice you left yours blank. You  
25 did not answer it, which concerns me. And I think,

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1 trial if we would have gotten to the punishment stage of  
2 a trial if you believe the person acted in self-defense?

3 A. That, honestly, I don't know. Depends. It  
4 would have to depend on the circumstances as to  
5 self-defense, you know. If it was a barroom fight or  
6 something like that, and the person he was fighting was  
7 killed, I don't know. To be honest, I really don't  
8 know.

9 Q. Let me ask you, because we use the phrase --  
10 and maybe you've never been exposed to it. Do you know  
11 what self-defense is?

12 A. Yeah, you're defending your life.

13 Q. Okay.

14 A. But I don't look -- I guess I look at it  
15 differently. I'm thinking, if I'm going to defend my  
16 life, you're actually going to harm me or I'm going to  
17 think you're doing harm to me.

18 Q. That's exactly what self-defense is. You're  
19 either under immediate attack, or you reasonably believe  
20 that you're about to be and you fear for your life. The  
21 law says you're allowed to take the other person's life  
22 if --

23 MR. MCCLELLAN: I object. That's not the  
24 law.

25 THE COURT: I understand. That's the

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1 problem. I understand.

2 Q. (BY MR. HILL) If you believed, according to  
3 your understanding of self-defense, that a person acted  
4 in self-defense; they did cause a person's death, but it  
5 was based on self-defense, how would you have to vote in  
6 that situation? Would you vote a person guilty or not  
7 guilty?

8 A. To be honest, like I said, I don't know. I  
9 don't know what I would do. It depends on the evidence,  
10 what's going on. Just depends.

11 Q. Assume the evidence convinced you it was  
12 self-defense, okay. You listened to all the evidence,  
13 and you are convinced that it was self-defense. Would  
14 you then find that person guilty or not guilty?

15 A. I would possibly find him not guilty if it was  
16 actually self-defense.

17 Q. But, of course, you're not going to be called  
18 upon to make that decision until you've heard all the  
19 evidence.

20 A. Uh-huh.

21 Q. My concern was that we not confuse  
22 self-defense, which would have resulted in the person  
23 being found not guilty, right?

24 A. Uh-huh.

25 Q. We're on the same page. Many people make the

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1 Q. But you're right. Decide the facts and come  
2 back at sentencing in the punishment phase. Do you have  
3 any questions of me?

4 A. No.

5 Q. Still want to serve on the jury?

6 A. Yeah, I think so.

7 Q. Okay, thanks.

8 THE COURT: Thank you, sir.

9 Miss Barr, in just a second I'm going to  
10 excuse you. (Court admonishes juror.)

11 GILBERT CANTU,

12 having been first duly sworn, testified as follows:

13 VOIR DIRE EXAMINATION

14 BY THE COURT:

15 Q. How are you, sir?

16 A. Pretty good.

17 Q. Mr. Cantu, first off, let me ask you to  
18 remember back to Monday, everybody was here together --

19 A. Yes.

20 Q. -- and the things we talked about on that day.

21 Add to it this morning the things we talked about this  
22 morning. Out of everything that we have talked about up  
23 to now, do you have any questions at all for me?

24 A. No.

25 Q. Is there anything up to now that we have not

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1 comment when we ask them, What type of evidence do you  
2 think would be mitigating that would cause you to vote  
3 for life rather than death? And people say, well, if it  
4 was done in self-defense. Well, if it was done in  
5 self-defense, the person would never have been convicted  
6 in the first place. We would have never gotten to the  
7 second stage of the trial. You follow how the process  
8 works?

9 A. Yeah.

10 Q. I think it's confusing; because if you've never  
11 had to serve on a jury before like that, there is a lot  
12 of different things being asked of you. And sometimes  
13 people find it difficult to figure out exactly which  
14 stage we're talking about. If you had to very quickly  
15 describe for me the process of a capital murder trial,  
16 could you do that for me?

17 A. As to whether the evidence gets presented, and  
18 then the verdict, and then the sentencing phase? Is  
19 that what you're --

20 Q. That's it. Most people stand there and say,  
21 well, we've got to decide life or death. And they kind  
22 of conveniently leave out the whole part about, we would  
23 have first had to have found the person committed a  
24 crime before we get to the punishment.

25 A. Uh-huh.

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1 yet addressed that you feel as though we should talk  
2 about because it might have some bearing or some  
3 influence on your being a juror in this case?

4 A. No. I was wondering about a case on -- I was  
5 wondering why a case about a neighbor shooting a  
6 neighbor. He got convicted of murder and got ten years  
7 probation. I was wondering about that. That's what you  
8 would -- you were talking to us.

9 Q. Well, you see, why they got ten years probation  
10 was based upon whoever was viewing the evidence in this  
11 case and whatever that evidence was. But can you see  
12 how that's murder and this is capital murder?

13 A. Right, right, yeah, I understand.

14 Q. I can't get more specific in terms of an  
15 answer, because I don't have any idea what case it is.

16 A. Right.

17 Q. But I know that's the reason for it. Having  
18 addressed that issue, can you think of anything at all,  
19 Mr. Cantu, whether it be something about your personal  
20 life or something about your professional life, whether  
21 it be something about your health or anything else?

22 A. No, I'm sorry.

23 Q. Anything at all you can think of that would  
24 interfere with your being a juror in this case?

25 A. No, sir.

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1 THE COURT: Mr. McClellan.

2 MR. MCCLELLAN: Thank you, Your Honor.

3 VOIR DIRE EXAMINATION

4 BY MR. MCCLELLAN:

5 Q. I didn't think you would ever get there, Mr.  
6 Cantu.

7 A. Yes.

8 Q. My name is Lyn McClellan. Along with Claire  
9 Conners, we represent the State of Texas in this case.  
10 Got just a couple of questions for you. On your  
11 questionnaire you checked this question: Do you have  
12 any health problems that would affect your service as a  
13 juror? You said yes and didn't list any.

14 A. No. I said yes?

15 Q. You checked yes.

16 A. Oh, no, I don't. I'm sorry.

17 Q. That's why I'm checking. Look pretty healthy  
18 to me. There is a question here: Do you have any  
19 religious, moral, or personal beliefs that would prevent  
20 you from returning a verdict which would result in the  
21 execution of another human being? And you checked yes.

22 A. I'm trying to figure out why I checked yes,  
23 because I don't feel like I would have any -- I don't  
24 have any religious or moral issues.

25 Q. We're seeking the death penalty in this case.

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1 A. Right.

2 Q. For us to put somebody on the jury over here  
3 that could never give the death penalty would be kind of  
4 stupid on my part. Are you the type of person that will  
5 make me look stupid? Are you the type of person that  
6 could never give the death penalty?

7 A. No.

8 Q. So you think it's appropriate in certain types  
9 of cases?

10 A. Right.

11 Q. What kind of cases do you think it's  
12 appropriate?

13 A. I would say, depends on the situation. I'm not  
14 against the death penalty. And also, I can give a life  
15 sentence, but depends on the situation.

16 Q. Ten years probation would be a little light for  
17 you?

18 A. Well, that would.

19 Q. All right. Thank you very much, sir.

20 MR. MCCLELLAN: I'll pass the venireman.

21 THE COURT: Mr. Hill.

22

23

24

25

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1 VOIR DIRE EXAMINATION

2 BY MR. HILL:

3 Q. Are you having a good day so far?

4 A. Yes.

5 Q. Can you give me any reason at all why Mr. Wentz  
6 and I should not choose you to sit in judgment of this  
7 case, knowing that we represent this man right here  
8 that's charged with capital murder?

9 A. No.

10 Q. Okay. Are you one of these individuals that's  
11 just chomping at the bit to get on the jury? Or if I'm  
12 chosen, I'll do everything I can to listen carefully,  
13 make whatever decision I feel is appropriate under the  
14 law and the evidence?

15 A. I think I'm very objective. I've never served  
16 before, and it's not a rush to get into the jury. It's  
17 just if I do have to get in, or if I am elected to get  
18 in there, I'm pretty objective. I think I can do a good  
19 job.

20 Q. Okay. Just a moment, please. Thank you, sir.

21 THE COURT: Mr. Cantu, in just a second  
22 I'm going to excuse you. Before I do, I will tell you  
23 that we want you back two weeks from yesterday,  
24 Wednesday, September the 29th. I'm going to give you a  
25 piece of paper. (Court gives juror admonishments.)

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1 GREGORY ADAMS,

2 having been first duly sworn, testified as follows:

3 VOIR DIRE EXAMINATION

4 BY THE COURT:

5 Q. How are you today?

6 A. Good.

7 Q. Mr. Adams, first off let me ask you this: If  
8 you would, in your mind's eye, remember back Monday,  
9 when everybody was here in a group, the things we talked  
10 about, add to it this morning when y'all were in the  
11 jury box the things we talked about this morning. Out  
12 of everything we have talked about so far, do you have  
13 any questions at all for me?

14 A. Not so far.

15 Q. Is there anything up to now that we have not  
16 yet talked about that you feel as though we should  
17 address or confront because it might have some bearing  
18 on your service as a juror in this case?

19 A. Not that I know of.

20 Q. Is there anything at all, sir, that you can  
21 think of that you're aware at the present time, whether  
22 it be something about your personal life, something  
23 about your professional life, something about your  
24 health, or anything else for that matter, that you can  
25 think of that would in any way interfere with your

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1 ability to be a juror in this case during the time frame  
2 we've talked about?

3 A. I don't know of any.

4 Q. The rules we have set out, the things we talked  
5 about that can come into play during the course of a  
6 trial like this, any of them that you have found to be  
7 objectionable in any way?

8 A. No.

9 Q. So that if you were a juror, then, if I'm  
10 hearing you correctly, you would be both willing to  
11 follow, as well as enforce those rules as a juror?

12 A. That's correct.

13 Q. The idea that -- and I know we have spent some  
14 time today talking about the second aspect of a trial  
15 such as this, which is not in any way meant to diminish  
16 the first half of the trial, because you never get to  
17 the second half unless there has been a finding of guilt  
18 at the first half.

19 But can you see from the time we have  
20 spent on each of the three decisions that a jury can be  
21 called upon in a capital murder case are all independent  
22 of each other? The finding of guilt in the first phase,  
23 if there is one, in and of itself does not dictate how  
24 these two questions should be answered. The finding of  
25 guilt of capital murder, finding of yes as to Special

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1 who -- just their general opinions about things may be  
2 one way, but you were on a jury once before. I think  
3 you said an assault case?

4 A. That's correct.

5 Q. You know, having been on a jury, that if you  
6 have certain opinions, you may, in order to be a juror,  
7 have to set those aside and follow whatever the law and  
8 evidence is in that particular case.

9 A. That's correct.

10 Q. Are you the type of person that can do that?

11 A. Yes, I am.

12 Q. Can you tell me something about that assault  
13 case, if you remember anything about it, that you were  
14 on several years ago?

15 A. That was about twelve years ago.

16 Q. Was it six people or twelve on the jury? Do  
17 you recall that?

18 A. I believe that we had twelve and two  
19 alternates.

20 Q. Okay. So it was an assault case. Can you tell  
21 me what the facts were? Did somebody die?

22 A. No. I believe that it was an assault by  
23 physical punching, I think.

24 Q. Fistfight?

25 A. Yeah, fistfight.

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1 Issue number One, a future danger. That is the jury's  
2 verdict. Those events, in and of themselves, do not  
3 dictate what the answer to the second question should  
4 be. Are you okay with that?

5 A. That's correct.

6 Q. The idea being whatever results you reach,  
7 would you commit to us that you would never reach it  
8 until after all the evidence was in; and carefully, for  
9 your own self, evaluate all that evidence in the case?

10 A. Yes.

11 Q. Before we start, have you any questions of me?

12 A. Not yet.

13 Q. Okay.

14 THE COURT: Mr. McClellan.

15 MR. MCCLELLAN: Thank you, Your Honor.

16 VOIR DIRE EXAMINATION

17 BY MR. MCCLELLAN:

18 Q. Mr. Adams, my name is Lyn McClellan. Along  
19 with Claire Connors, we represent the State of Texas in  
20 this case. I want to go over your questionnaire, go  
21 over some of your answers there, and talk to you about  
22 certain aspects of the law that apply in a case like  
23 this. You filled out the questionnaire before you had  
24 the benefit of the Judge's voir dire the other day, as  
25 well as voir dire again today, and a lot of people

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1 Q. And injuries as a result of that?

2 A. That is correct.

3 Q. And you said you reached a verdict, and y'all  
4 assessed punishment in the case?

5 A. That is correct.

6 Q. Do you remember what punishment you assessed?

7 A. The party was found guilty, but I don't recall  
8 how many -- I don't know what the sentence was.

9 Q. You don't recall whether it was probation or  
10 pen time or anything?

11 A. I don't recall.

12 Q. I assume there is nothing about that jury  
13 service that would keep you from being -- that would  
14 affect your service as a juror in a case like this?

15 A. Again, that was just so long ago, and I don't  
16 really recall a lot of the facts about the case.

17 Q. All right. There was a question in here, also,  
18 that asked about, What is your feeling about the death  
19 penalty? And you said, I agree with the death penalty  
20 for various crimes. And then it asks you for your best  
21 argument for the death penalty; and you listed murder,  
22 rape with intent to kill, or rape of child.

23 As you now know, those are cases where the  
24 death penalty doesn't apply. The death penalty only  
25 applies in the State of Texas when there is murder plus



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1 some aggravating circumstance. So murder by itself  
2 doesn't qualify. Rape with intent to kill doesn't  
3 qualify. If the person was killed during a rape, that  
4 would qualify. And rape of a child doesn't qualify for  
5 the death penalty. But there are a lot people who think  
6 the death penalty should be expanded and include other  
7 things.

8 You know from voir dire, from the Judge's  
9 voir dire that in Texas, murder is the intentional  
10 taking of another person's life without any legal  
11 justification. By this, I mean, we're not talking  
12 self-defense. We're not talking accident. We're  
13 talking intent to kill. So the death penalty is only  
14 available when that is then connected with some other  
15 crime.

16 We have alleged in our indictment here  
17 murder during a kidnapping. That makes it a capital.  
18 We also allege killing two or more people in one  
19 criminal episode. That makes it a capital. Other types  
20 of capital murder are murder during a robbery, murder  
21 during a sexual assault, or burglary, killing a peace  
22 officer in the line of duty, killing a child under a  
23 certain age, all kinds of cases the Legislature said the  
24 death penalty ought to be available; because there is no  
25 one case, any case, where the death penalty is

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1 automatic. We don't have the automatic death. We have  
2 the death penalty that's available, depending on your  
3 answers to the questions.

4 The Judge talked to you today about this.  
5 Do you have any problem with the way the law is set up;  
6 the death penalty is only available for murder plus some  
7 aggravating circumstance?

8 A. No, I do not have a problem with the law the  
9 way it's set up. And I did learn through the Judge in  
10 his conversation with us exactly now what capital murder  
11 is and how a capital murder trial is conducted,  
12 resulting in another crime in addition.

13 Q. Right. And I assume you did not know that  
14 prior?

15 A. I did not.

16 Q. And most people don't have any reason to know  
17 that, because it's probably something they wouldn't come  
18 in contact with?

19 A. Right.

20 Q. There was another question, also, in the  
21 questionnaire that says, Do you believe that mitigating  
22 evidence concerning a capital murder defendant's  
23 background should be considered in deciding whether or  
24 not he or she should receive the death penalty? And you  
25 checked no. Now what did you think mitigating evidence

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1 meant back when you were filling that out?

2 A. I think I probably felt that special  
3 circumstances occurred.

4 Q. Now you know from the voir dire that in Issue  
5 Number Two, you'll be directed to look and see if there  
6 were mitigating circumstances; and they will be defined  
7 as special circumstances. They have then -- you have to  
8 weigh and decide in your mind, are they such to change  
9 your vote from death to life? Are you open to looking  
10 at mitigating evidence? That is evidence that tends to  
11 make you believe that life, as opposed to death, ought  
12 to be the punishment. Are you open to examining that  
13 type of evidence?

14 A. Yes, sir.

15 Q. You wouldn't know whether it would be  
16 sufficient to change your mind or not without knowing  
17 what it was, and listen to all the evidence, and weigh  
18 in your mind. What we need to find out is that you  
19 would give it that shot and you would give it that  
20 consideration that the law's going to direct you do?

21 A. That's right. I think it's only fair to do  
22 that.

23 Q. Right. It boils down to -- and some people  
24 make fun when I say this. But you're going to be asked,  
25 as a juror, to take an oath to a true verdict render

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1 based on the law and the evidence. You don't know what  
2 the law of capital murder that you're going to be given  
3 is going to be. A lot of that stuff the Judge talked  
4 about is what he'll give you in the law; but you'll be  
5 given a charge, as a juror, and it will have the law  
6 that affects the case. You'll be given two charges if  
7 you found the defendant guilty, because then there will  
8 be basically two small trials.

9 First you'll be given a charge about guilt  
10 or innocence. It tells you what the State must prove.  
11 At the punishment stage of a trial you'll also be given  
12 a charge, if you get to that stage; and it will tell you  
13 how to answer the questions. So, you'll have the law  
14 and the charge you'll take back in the jury room. Then  
15 you have the evidence from the witness stand at guilt/  
16 innocence, as well as punishment. You'll have people  
17 come in and testify. You listen to what they have to  
18 say, and you judge their credibility. You believe what  
19 you want to believe, disbelieve what you don't want to  
20 believe, and then make your decision based upon the law  
21 and the evidence. Any reason you could not do that?

22 A. No.

23 Q. So what that means, then, is if you have some  
24 preconceived idea -- you have an idea, well, if  
25 someone -- if someone takes another person's life, they

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1 ought to have to pay with their own life. That's not  
2 what this process is going to be about. That may end up  
3 resulting in that, but you may have to follow the law  
4 that's from the evidence in the courtroom. And if it  
5 doesn't result in that, you got to be able to abide by  
6 that decision that doesn't result in that. Any problem  
7 with that?

8 A. No.

9 Q. People say they're in favor of the death  
10 penalty. It's a proper punishment for certain types of  
11 crimes; but some people have gone further and said, I  
12 don't believe I could ever participate in a process  
13 where I would be called upon to make a decision where I  
14 knew it would result in this Judge ordering the  
15 execution of this defendant on trial. Do you have any  
16 doubts about your ability to participate in that type  
17 process and make that type of decision if that's what  
18 the law and the evidence calls for?

19 A. I wouldn't have a problem with that.

20 Q. All right. There is a statement that -- or an  
21 answer to a question in here that I also wanted to  
22 follow up on that was talking about drugs and the effect  
23 of drugs on people. It said, In your opinion, how do  
24 illegal drugs affect a person. You said, If they are  
25 taking drugs, they are not of the right mind. Okay. So

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1 their actions.

2 Q. Right.

3 A. And if they're on drugs or alcohol or out in  
4 space there somewhere because of the effects of these  
5 drugs; and they commit a crime, or they do something  
6 that is illegal, then I still think that they are  
7 responsible for their actions.

8 Q. Okay. And that's what the law says. Law says  
9 that voluntary intoxication is not a defense.

10 Obviously, somebody slipped something into your drink or  
11 something that you were having and you passed out or did  
12 something and went on and drove off the road and killed  
13 somebody or whatever, that might be a different  
14 situation; but it's voluntary intoxication. In other  
15 words, when it's your decision to go ahead and take the  
16 drugs or drink the alcohol, then you're still held  
17 responsible for your conduct. So what you're saying is  
18 you agree with the law?

19 A. That's correct.

20 Q. The reason I'm having trouble, Mr. Adams, is  
21 because due to your questionnaire, it appears you're the  
22 type person who can listen to the evidence, make your  
23 decision on what the evidence is, follow the law; and  
24 that's what we're looking for, people that can follow  
25 the law and the evidence. Do you have any preconceived

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1 by -- what do you mean by that?

2 A. Not ever taking any drugs, I think it's just  
3 more of something learned, or read, or that you heard,  
4 or you're taught.

5 Q. You're talking about the effect --

6 A. The effects of the drugs.

7 Q. -- will put you in a situation of --

8 A. You may not be of the right mind.

9 Q. Right, I understand. And, of course, some  
10 people say you're not of your right mind if you decide  
11 to take drugs, because you're messing up things. Do you  
12 believe that a person who takes drugs, let's say is high  
13 on drugs or alcohol -- I mean, you may hear in the trial  
14 that person was high on drugs or alcohol that committed  
15 a crime. Some people say, I think that ought to mean  
16 they're not responsible for the conduct. Some people  
17 say, well, I think you're responsible for your conduct  
18 whether or not you're on drugs or not, as long as you're  
19 not insane; in other words, you know right from wrong.  
20 If you're not so far gone you couldn't tell right from  
21 wrong, you ought to be responsible for your conduct  
22 whether you're downing alcohol or whether you're  
23 intoxicated with a controlled substance. How do you  
24 feel?

25 A. I believe that everyone is responsible for

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1 notions coming into this case that, you know, what if I  
2 find someone guilty of capital murder? You know, my  
3 automatic leaning is that they ought to get the death  
4 penalty unless someone proved to me they shouldn't. Do  
5 you have any concept like that?

6 A. I don't think a person should until they hear  
7 everything, because we may find out some things that --  
8 you know, I can't make a decision on something I haven't  
9 heard.

10 Q. Agree. You're exactly right. You'd be  
11 surprised, though, the number of people that can, based  
12 on what they tell us. One thing, also -- well, when you  
13 said that, it made me think of something, but I forgot.  
14 But I'm sure Mr. Hill, who is a little more eloquent  
15 than I, will think of it.

16 MR. MCCLELLAN: I'll pass him.

17 THE COURT: Mr. Hill, the pressure is on.

18 VOIR DIRE EXAMINATION

19 BY MR. HILL:

20 Q. Hi, Mr. Adams, how are you?

21 A. Hello, how are you?

22 Q. I can't stand all these backhanded compliments  
23 that I'm getting from McClellan, but I'll try to measure  
24 up if I can. I looked at your questionnaire. I see a  
25 lot of things that jump out at me. If I'm only going to

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1 look at you from a defense perspective, if I'm going to  
2 look at you the way a typical defense lawyer looks at a  
3 prospective juror and says, oh, my God, every answer, or  
4 a lot of answers this guy gives seems to suggest he's  
5 probably going to vote for death, if he's given the  
6 opportunity, every time. Okay. And I think we do a  
7 disservice to people if that's the way we judge them.

8 Obviously, I'm not going to shy away from  
9 my responsibility to Mr. Mamou; and neither will  
10 Mr. Wentz. But I think it's only fair to give you an  
11 opportunity to talk to us a little bit and kind of visit  
12 on some of these topics; because ultimately, I'm going  
13 to have to give either the thumbs up or thumbs down on  
14 whether you're going to sit with eleven other people.  
15 It's not going to be a reflection either way, or it  
16 wouldn't be a reflection if I ultimately said, well, I'm  
17 just not comfortable with having Mr. Adams on the case.  
18 He would be a great person in every other case. I  
19 haven't made that decision yet. I hope in visiting with  
20 you a little bit, maybe I'll feel more comfortable with  
21 whatever decision I am going to make. Okay?

22 A. Okay.

23 Q. I don't mean to offend you. I don't mean to  
24 invade your privacy or anything; but I think you can  
25 understand, given the magnitude of this case, I better

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1 go ahead and ask some questions, even if they are tough  
2 questions, to give you an opportunity to visit with me.

3 A. Sure.

4 Q. We hear all the time about the law says this;  
5 you know, you can follow the law. And people tend to  
6 kind of get boxed in a little bit; and they feel as  
7 though if they start objecting or saying they don't feel  
8 comfortable with a particular law or aspect of the law,  
9 that somehow they're not going to be perceived as a good  
10 juror. Maybe they feel like they're failing a civics  
11 test.

12 I'll tell you right now, if I'm called  
13 down for jury service and I find out the allegation is  
14 something against a child, you know, if I'm going to be  
15 honest with myself and I'm going to be honest with the  
16 attorneys, I'm going to have to raise my hand. I've got  
17 three kids, very close to my children. I'm sorry. I  
18 don't know that I could honestly set aside the feelings  
19 that I have, having seen the kids from infancy to now,  
20 one of them in college, two about to go off. If our  
21 system is going to work, I think I owe it to everybody  
22 to let them know, let them call it the way they see. If  
23 they think, hey, we still want Hill on the jury, fine.  
24 If they don't, I'll go on to the next case. Talk to me  
25 a little bit about your views on the death penalty.

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1 If I'm sitting on the bench down at the  
2 jury assembly room, we introduce one another to  
3 ourselves and we're talking. What are you telling me  
4 about your views of the death penalty? Are you telling  
5 me about how you think of crime, in general?

6 A. Okay. Death penalty, to me, is very a touchy  
7 subject. I think it's an issue and opinion of a lot of  
8 people. To me the death penalty is a punishment that I  
9 feel is necessary in our society for a lot of crimes  
10 that are committed.

11 Q. Okay. If I'm playing devil's advocate and I'm  
12 saying, well, gee, Mr. Adams, you know, I understand  
13 that; but what about for people that -- maybe the way  
14 the crime was committed; maybe the people knew one  
15 another; maybe there was some circumstances there beyond  
16 just the bare bones, one or two people were killed.  
17 Don't you think that circumstances sometimes can kind of  
18 help explain how a situation occurs?

19 A. You bet. I still feel like whatever is heard  
20 in trial, I think that would depend on the sentence  
21 given.

22 Q. Okay. Could we both agree that the  
23 circumstances of a crime may require us both to find  
24 that person guilty, hold them responsible for their  
25 conduct, yet you and I may disagree as to what the

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1 eventual sentence should be?

2 A. That's correct, we could disagree.

3 Q. Okay.

4 A. But we might have found the same -- we may have  
5 ended up with the same result, as far as all the  
6 evidence led to a guilty verdict.

7 Q. Right. Okay. So it's critical for me to make  
8 sure, and I really don't have any serious concern about  
9 you understanding that there are potentially -- and I  
10 underline potentially -- separate trials we're talking  
11 about here.

12 The first trial is: Has the State proven  
13 beyond a reasonable doubt my client committed any crime?  
14 And the Judge just told you you could listen to all the  
15 facts and circumstances, and maybe you didn't feel like  
16 the State had proven all the elements of a capital  
17 murder; but you do believe that maybe some other crime  
18 included within that murder or kidnapping was committed.  
19 So, that would be a situation where we might look at the  
20 evidence and ultimately conclude, yes, he is responsible  
21 legally for what he did. No self-defense. No accident.  
22 No mistake. Nothing that absolves him of criminal  
23 responsibility.

24 We now move to the second trial that says,  
25 okay, now you've got this guy that's been found guilty.

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1 What do we do with him? Do we give him life, do we  
2 give him death, if it's a capital murder case? You're  
3 sitting there and you're saying, look, I'm being asked  
4 to make a life and death decision no matter how you cut  
5 it, no matter if you say you don't really do it. You  
6 know what's going to happen. We told you what's going  
7 to happen in terms of your answers.

8 A. Right.

9 Q. What do you want to hear before you make that  
10 kind of decision? What is the totality of the evidence  
11 or the facts? What's going to make you feel most  
12 comfortable before you make a decision?

13 A. I think, if I'm hearing this correctly, this  
14 will come into the second part of the trial --

15 Q. Correct.

16 A. -- that I'm going to hear that. I'm going to  
17 hear additional information that leads to the character  
18 or the who, how this person was brought up, how or where  
19 they lived, just all the circumstances, more information  
20 that may help me make the determination of whether it's  
21 death or life.

22 Q. Is that what you want?

23 A. I do. I mean, I really want to know before I  
24 make that final decision. See, I think there is a  
25 difference between us sitting down maybe over a cup of

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1 coffee in a cafeteria and talking about social issues  
2 and when you're sitting in one of these twelve chairs  
3 and you've got to really do the decision making. I  
4 might have very strong feelings that may not be  
5 reflective of what a defense attorney typically thinks.  
6 But when I sit on this jury, I have to go ahead and do  
7 exactly what my conscience tells me to do based upon my  
8 thorough review of all the evidence and what instruction  
9 the Judge gives me.

10 The Judge tells me if the State leaves out  
11 a particular aspect of the evidence and they don't prove  
12 something, I can't make it up for him. I can't say,  
13 well, gee, this was a horrible, gut-wrenching decision;  
14 but I'm going to go ahead -- and I kind of forgot what  
15 my oath is -- and I'm going to go ahead and find them  
16 guilty anyway. I'm not looking for additional  
17 information. I mean, I know there is a cutoff point,  
18 and that's all you're doing here.

19 Q. Yeah, at some point the evidence is going to  
20 stop.

21 Q. There are some cases where you're sitting there  
22 saying, gee, I wish I would have heard something more.  
23 We, as attorneys, we may ask all the questions that we  
24 think gets to the point. And it often happens we go  
25 back and talk to the jurors; and they say, Why didn't

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1 you ask this? And I'm, like, I didn't think it was  
2 important. I thought it was clear from my questioning.  
3 So that could happen.

4 One of the things -- you mentioned a  
5 person's upbringing, childhood and stuff, to know all of  
6 that before making an evaluation. I want to make sure  
7 you're not having twelve people who are sitting on the  
8 jury and are saying things like, oh, you know, the  
9 defense lawyer, he's going to tell us that Johnny didn't  
10 have a cookie everyday at lunch, and that's how come  
11 we're here. We're not trivializing that type of  
12 situation. We're not talking about that type of  
13 situation. We're talking about knowing as much as you  
14 can about a person that you're going to sentence. And I  
15 take it from your response, you would want that  
16 information. You would want to have as much information  
17 as is available before you make a decision. Is that  
18 pretty much what it comes down to?

19 A. That is correct.

20 Q. I notice you have a fifteen-year-old?

21 A. That's correct.

22 Q. And he's over at Welch?

23 A. Yes.

24 Q. Both lawyers?

25 A. Right.

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1 Q. Do you have custody of your son?

2 A. Yes, I do. In fact, I adopted him two years  
3 ago.

4 Q. Okay. Let me ask you this: Are there  
5 extracurricular activities he's engaged in?

6 A. Isn't at the time. He likes baseball, but I  
7 haven't signed him up yet.

8 Q. Does he play with Westbury Little League?

9 A. He's not playing at all yet.

10 Q. What kind of questions -- it's only fair you  
11 get to ask some questions, if you have any. We get to  
12 ask you all these questions, make you sit there,  
13 probably feel like, jeez, when is this going to stop?  
14 But what questions do you have of me?

15 A. Well, I really don't right now.

16 Q. That's okay. I just feel like it's fair to  
17 give you an opportunity if you do. Here, one thing  
18 that if I put on my defense attorney hat for a minute --  
19 and we lawyers generally tend to read things and read  
20 them very literally, and they start getting nervous  
21 about things. So I'm going to read this answer you gave  
22 and just ask you one part of it.

23 It says, What is your opinion of -- and it  
24 says prosecutors? You admire them because they are  
25 trying to bring justice to the society. Defense



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1 attorneys. I respect them because they have a job to  
2 do, to defend a person until they are found guilty.  
3 What do you think about your answer there concerns me?

4 A. Probably the part that "until they are found  
5 guilty."

6 Q. What were you thinking as you responded to that  
7 question? Help me understand that answer.

8 A. I think just -- where I was heading with that  
9 is that you have a job to do, just like we all do. And no  
10 matter how, no matter what you feel about the case or  
11 what evidence is brought, I believe that you, with all  
12 of your ability, have to defend this person. And it  
13 only goes up until the time that the trial or the case  
14 is over, and then you move on.

15 Q. Here is my concern. I'll be honest with you.  
16 You said, "until they're found guilty." And I'm sitting  
17 there going, oh, my God. If he and eleven others find  
18 Mr. Mamou guilty, we've got a punishment stage still.  
19 And it's like, what's the point? You see?

20 A. I mean, after the whole trial.

21 Q. So now we know what the law requires and what  
22 the process requires. I want to ask you this: I want  
23 to know your feelings. I want to know whether you still  
24 feel that, quote, "special circumstances or mitigation"  
25 really doesn't play a part in evaluating a life or death

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1 it to themselves. How does this sound? You do the  
2 crime, you've got to do the time. Does that sound like  
3 a cliché that everybody is comfortable with?

4 A. Well, you always hear that.

5 Q. Let me ask you this one: Do you think  
6 everybody that commits the same crime should be treated  
7 the same?

8 A. No.

9 Q. Here's the follow-up to it. I'm your lawyer,  
10 and you have just been found guilty of capital murder.  
11 And we're sitting at counsel table and, of course, this  
12 would have been discussed before this point in  
13 preparation. And I say, okay, great. You know, they  
14 found you guilty of capital murder. What do you want  
15 them to know about it? What would you think if you had  
16 twelve people sitting up here saying, Doesn't matter  
17 about Greg's background. What difference does that  
18 make? We don't need to hear anything about him. He's  
19 already committed capital murder. How would you feel  
20 being judged by twelve people like that?

21 A. I think I would want them to know as much as  
22 they can about how I was raised and the circumstances of  
23 maybe why I didn't turn out to be a good citizen or a  
24 good person.

25 Q. Would you want them to know as much about you

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1 decision?

2 A. I do believe it does now. I think I probably  
3 didn't say that in there, but I've learned a lot in this  
4 process just over the last few days. I do believe you  
5 have to listen to everything involved in the case.

6 Q. When you answered that question -- in all  
7 fairness to you, when you answered that question, were  
8 you thinking along the lines of, well, I don't want to  
9 know information; I don't think any information is  
10 really relevant to the punishment decision?

11 A. No. I guess I was really thinking that a lot  
12 of times I know that people try to say that because of  
13 how they grew up, how they lived in low income, or  
14 didn't have the money or whatever.

15 Q. Right.

16 A. They turn out bad, or they do bad things, or  
17 they're found guilty of this or that. But then it's a  
18 lot of other people who were raised that same way, and  
19 they didn't turn out that way. So, I'm just saying  
20 there always are circumstances, depending on that person  
21 and what happened in their lives as they were growing  
22 up.

23 Q. Let me throw this one out at you, because I  
24 think it kind of underscores where I'm coming from and  
25 what I think jurors really believe if they personalize

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1 as possible before they had to make a personal decision  
2 whether you live or die?

3 A. I think I would, yes.

4 Q. You don't find anything offensive about that;  
5 that you, yourself, if you were on trial, would at least  
6 want the jury to know about you and have whatever  
7 information they felt -- you know, they may find all the  
8 information about you is totally irrelevant.

9 A. I think it's -- sir, let me try to explain  
10 this. I think that there are reasons in a person's  
11 upbringing why things happen, but I believe that the  
12 jury -- or I think I could decide whether or not -- I  
13 know I don't make this decision; but whether it's a  
14 twenty-year punishment, or forty-year punishment, or  
15 sixty-year punishment is based on a lot of things.

16 Q. Right, you determine what factors are  
17 important.

18 A. I do.

19 Q. Last chance. Any questions?

20 A. No, I don't.

21 Q. Thanks?

22 THE COURT: Thank you.

23 (Court admonishes prospective juror.)  
24  
25

1 THE STATE OF TEXAS )

2 COUNTY OF HARRIS )

3 I, Pamela Kay Knobloch, Official/Deputy  
4 Official Court Reporter in and for the 179th District  
5 Court of Harris County, State of Texas, do hereby certify  
6 that the above and foregoing contains a true and correct  
7 transcription of all portions of evidence and other  
8 proceedings requested in writing by counsel for the  
9 parties to be included in this volume of the Reporter's  
10 Record, in the above-styled and numbered cause, all of  
11 which occurred in open court or in chambers and were  
12 reported by me.

13 I further certify that this Reporter's Record  
14 of the proceedings truly and correctly reflects the  
15 exhibits, if any, admitted by the respective parties.

16 I further certify that the total cost for the  
17 preparation of this Reporter's Record is \$ \_\_\_\_\_ and  
18 was paid by Harris County.

19 WITNESS MY OFFICIAL HAND this the \_\_\_\_ day of  
20 \_\_\_\_\_, 2000.

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22  
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24  
25  
\_\_\_\_\_  
26 Pamela Kay Knobloch, Texas CSR No. 1650  
27 Expiration date: 12/31/2000  
28 Official Court Reporter, 179th District Court  
29 Harris County, Texas  
30 301 San Jacinto  
31 Houston, Texas 77002  
32 713.755.6340

33 APPELLANT: CHARLES MAMOU, JR.  
34 CAUSE NO. 800112  
35



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## REPORTER'S RECORD

VOLUME 10 OF 25 VOLUMES

TRIAL COURT CAUSE NO. 800112

CHARLES MAMOU, JR. ) IN THE DISTRICT COURT  
Appellant )  
)  
VS. ) HARRIS COUNTY, TEXAS  
)  
THE STATE OF TEXAS )  
Appellee ) 179TH JUDICIAL DISTRICT

\*\*\*\*\*

## VOIR DIRE EXAMINATION

\*\*\*\*\*

On the 17th day of September, 1999, the following  
proceedings came on to be heard in the above-entitled and  
numbered cause before the Honorable Bob Burdette, Judge  
Presiding, held in Houston, Harris County, Texas:

Proceedings reported by computer aided  
transcription/stenograph machine.

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(Panel is brought in and seated.)

THE COURT: Folks, come on down on this end. Good morning. To remind you, we were here to visit with you about your prospective service as a juror in the case of the State of the Texas versus Charles Mamou, Jr. Mr. Mamou is seated over here next to his attorneys, Mr. Wayne Hill, Mr. Kurt Wentz. State of Texas is represented by two of her Assistant District Attorneys, Mr. Lyn McClellan, who is present right now, and Miss Claire Connors, who will be along in a little bit.

We talked to you the other day about some things that had to do with the rules that can come into play during the course of a trial like this. We talked about the fact that whatever rules do actually come into play will depend upon whatever the testimony is in the case. We talked about the difference between your job as a juror and my job as a Judge. You decide the facts. I decide the law. You take what you believe to be the believable testimony and, therefore, apply the applicable law out of the Court's charge.

We talked about the fact that the trial can come in two parts. The first part of the trial, the jury's only concern is going to be with deciding whether the defendant is or is not guilty. If the defendant is

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found not guilty, obviously the case is over with. If, however, the defendant is found guilty, we can come back. We do come back, and we can have a second portion of the trial.

The second portion of the trial, the evidence will be presented that is going to be remarkably different than the evidence presented at the first phase of the trial, because the jury's function is remarkably different. Since your job at the first phase of the trial is to decide the question of whether the defendant is or is not guilty, the focus of the evidence is going to be on the crime that was committed. Who did it? Where was it done? When was it done? How was it done? Who did it? The relationship of the parties, if there was one. The reason for doing it, if it's known. But that's all the stuff you're going to hear at the first phase of the trial.

At the second phase of the trial, if there is a finding of guilt, the focus of the evidence is going to shift and go away from the evidence about the crime; because you've already heard all there is to hear about the crime. And at the second phase of the trial, the focus of the evidence is going to be on the background, the character, and the comparative involvement, so to speak, of the defendant on trial.

5

Because what we're going to want you to do is possess enough information about the first part of the trial, the crime itself, also possess enough information about the person that committed the crime so you can intelligently answer two Special Issues or two questions that will be given to you at the second phase of the trial.

We're going to spend some time talking today about some things that we have not talked about before, when the big group was together. And to be perfectly honest with you, the reason we didn't talk about it then is because that group was too large. I don't mean the personalities within the group, but the numbers.

Tell you something else. We're going to talk about some things. I'll bet you none of the three of you have ever before thought about this in your whole life, and there is absolutely no reason why you should. And you may find -- and you may believe that some of this stuff is pretty specific and pretty precise. Please don't get frustrated. Don't, to yourselves, mentally throw up your hands and say, I can't do this. It's too hard. It's not.

First off, let me tell you, you're not going to have to memorize what it is I'm telling you

6

today. That's not the point of this. I'm telling you this today so you'll have an idea about what can happen. It's kind of like forewarned is forearmed.

The second thing is, the reason you don't have to memorize what I'm going to tell you is because all of these rules that we're talking about, if the testimony in the case does bring them into play, these rules will be given to you in writing. They will be in the Court's charge. You will have the Court's charge, the written instrument, with you back in the jury room during the totality of your deliberations.

So what we're talking about today is going to be written for you. You need to apply it if that time does come, so don't worry about memorizing. I just want to give you an overview, an overview for the purposes of maybe making you feel a little bit more comfortable doing something that you may not have ever done before.

Now we talked the other day that at the first phase of the trial all people charged with crime start off being not guilty, and they stay not guilty unless or until the quality of the State's evidence persuades the jury beyond a reasonable doubt that, in fact, the defendant is guilty.

The burden of proving the defendant's

7

1 guilt is on the State, so starting off the verdict for  
2 the jury is not guilty. And it's the State's job,  
3 through the quality of their evidence and the quality  
4 has to be sufficient that proves beyond a reasonable  
5 doubt the defendant's guilt. It's the State's job to  
6 bump up that not guilty to a guilty. And they bump it  
7 up on the basis of the quality of their testimony, the  
8 evidence they present. And trust me, bump it up, as I'm  
9 using it, is not a legal term. And as you'll find out,  
10 I'll try to avoid using as many of those terms as I can.

11 Say we come back to the second phase of  
12 the trial, if there was a finding of guilt, for purposes  
13 of determining, now what do we do with the person?  
14 We've got two questions. We need to answer those two  
15 questions on the board. And I want to spend some time  
16 talking about the questions.

17 The first question asks: Do you find from  
18 the evidence beyond a reasonable doubt that there is a  
19 probability that the defendant would commit criminal  
20 acts of violence that would constitute a continuing  
21 threat to society? Now, no matter who the defendant, no  
22 matter what the defendant, no matter who the case,  
23 there's never but two possible answers to that question.  
24 Answer yes or no answer, whichever way you think the  
25 evidence dictates.

8

1 Question Number Two says: Taking into  
2 consideration all of the evidence, including the  
3 circumstances of the offense -- that's going to be what  
4 you heard at the first phase of the trial, which is  
5 including character and background of the defendant, as  
6 well as the defendant's personal moral culpability,  
7 personal responsibility. And that can come into play if  
8 you have a case, for example, where it might be multiple  
9 defendants committing the crime. You want to know, how  
10 did this one's comparative conduct fit in compared to  
11 the other defendant's conduct? That's the reason for  
12 that part.

13 So the first half of the second question,  
14 you can see, is simply an instruction to the jury to go  
15 back over all of the evidence in the case for the  
16 purposes of asking yourself this question: Is there a  
17 sufficient mitigating circumstance or circumstances that  
18 make you believe that a life sentence would be a more  
19 appropriate verdict than a death sentence? No matter  
20 who the defendant, no matter who the victim, no matter  
21 what the case, there's two possible answers, yes or no.  
22 Again, answer that question the way you think it ought  
23 to be answered based on the evidence. We know from our  
24 conversation the other day that these questions are  
25 always going to be asked in this order.

9

1 These questions, the words never change in  
2 these questions. You and I know that we see cases in  
3 the paper reported where sometimes at the conclusion of  
4 a capital murder trial, some jury -- a life sentence is  
5 imposed. Sometimes a death sentence is imposed. Those  
6 things vary. And the things that vary, those verdicts  
7 vary from case to case to case. These questions never  
8 vary. The reason that the verdicts vary is because the  
9 facts are always different. The defendants are always  
10 different. The victims are always different.

11 And you may not have ever thought about  
12 this before, but the juries are always different.  
13 Because we could have four juries in here listening to  
14 the same testimony at exactly the same time go out in  
15 separate rooms and deliberate. We could have basically  
16 four different verdicts, hearing the same stuff from the  
17 same people at the same time, just evaluated a little  
18 bit different.

19 But the point of it is at this point I  
20 want to say it's not the jury's function to sentence  
21 somebody to life. It's not the jury's function to  
22 sentence somebody to death. It's the jury's function to  
23 take the evidence that exists in the case simply for the  
24 purpose of coming up with answers to these two  
25 questions.

10

1 Now these questions will be contained in  
2 the Court's charge at the second phase of the trial if  
3 the defendant was convicted of capital murder. We  
4 talked the other day briefly about the fact that in the  
5 Court's charge, the rules that come into play are going  
6 to be contained in the charge. And there are going to  
7 be a number of words that are going to be defined for  
8 you.

9 There are also going to be a number of  
10 words that are not going to be defined for you in the  
11 Court's charge. And your question is: How in the world  
12 do you people decide what you will tell us about and  
13 what you won't tell us about? The answer to that is  
14 really very simple. There is no reason for us to expect  
15 jurors to come and give up their time and be armed with  
16 knowing, defining -- if we're going to be using a term  
17 that's peculiar to the lawyering business, we're going  
18 to define it for you in the Court's charge. If we're  
19 going to be using words that we use everywhere we are,  
20 work, play, family, school, whatever, then we're not  
21 going to define those words; because they're words of  
22 common usage, so we're going to find with these  
23 questions, we've got some of each of those.

24 Let's start off talking about these  
25 questions, talking about the words contained in them for

11

1 a couple of minutes. The first question starts off with  
2 the phrase: Do you find from the evidence beyond a  
3 reasonable doubt? Well, let's stop right there;  
4 because we've already talked about reasonable doubt. We  
5 talked about it the other day. And we talked about when  
6 we did from the standpoint of that's what the State's  
7 got to prove in order to establish a defendant's guilt.  
8 It is exactly the same burden as to this first question  
9 at the second phase of the trial. The State's got to  
10 prove to you what the answer to this first question  
11 should be.

12 Now if at the first phase of the trial a  
13 defendant starts off being not guilty, then it's the  
14 State's job through their evidence to bump it up to a  
15 guilty verdict. That exact same logic applies to the  
16 first question at the second phase of the trial. That  
17 question starts off being answered no. And it's the  
18 State's job through their evidence to bump it up to a  
19 yes answer.

20 Now, that tells us something. Anytime we  
21 see the phrase, do you find from the evidence beyond a  
22 reasonable doubt, that means the State's got to prove to  
23 you what the answer should be. Now starting off the  
24 beginning of the second phase of a capital murder  
25 trial -- that is to say, once a person has been found

12

1 guilty of capital murder, the presumption of being not  
2 guilty, obviously, has been eliminated, been erased  
3 because of the quality of the evidence. But while the  
4 presumption of innocence has gone away, a brand-new  
5 presumption pops in its place; and that new presumption  
6 is this: It is presumed that for all people convicted  
7 of capital murder, the appropriate punishment is life in  
8 the penitentiary.

9 Now, how in the world did I get to that?  
10 Well, I got to that from this way: The State is  
11 required to prove to you beyond a reasonable doubt that  
12 the answer to that first question is yes. If they don't  
13 prove it to you, the answer to the first question is no.  
14 We understand that in order for the death sentence to be  
15 imposed, it takes a yes answer and a no answer to these  
16 questions, in that order.

17 A no answer to the first question is  
18 different than a yes and a no, in that order. That  
19 means a life sentence is going to be imposed. So just  
20 like at the first phase, the defendant starts off being  
21 not guilty and at the second phase starts off getting a  
22 life sentence unless the quality of the State's evidence  
23 is such that it causes you to believe the first  
24 answer -- first question should be answered yes. Any  
25 questions about how I got to that point?

13

1 So, right -- yes, sir?

2 VENIREPERSON: One question. Start off  
3 with the presumption of innocence, okay. And if it's  
4 guilty, the first part of the question is a presumption  
5 of life imprisonment. The prosecutors have to present  
6 enough evidence that it will be a continuing threat for  
7 a death sentence?

8 THE COURT: Yes, sir. Okay. So, also,  
9 what we've learned is this: That life and death term  
10 equals possibilities as sentencing options. Whichever  
11 is appropriate would depend upon how the jury views the  
12 evidence. So what that tells us is that simply and only  
13 because a defendant has been found guilty of capital  
14 murder, for that reason and that reason only, cannot  
15 have any bearing on what the answer to that first  
16 question should be. Because it asks you something  
17 entirely different than, did he do it? Go back and look  
18 at the same body of evidence, perhaps; but you look at  
19 it for the purposes of getting it -- to find out  
20 something different about it.

21 But anyway, first question: Do you find  
22 from the evidence beyond a reasonable doubt there is a  
23 probability? The word probability is not going to be  
24 defined for you, because you folks use that word all the  
25 time. While I can't tell you what a probability is, the

14

1 law permits me by comparison to tell you that whatever  
2 probability does mean to you, there are two things it  
3 can't mean.

4 The first thing that it cannot mean is --  
5 first thing is whatever probability does mean to you, it  
6 must mean something more than the possibility. Anything  
7 could possibly happen. Just because it could possibly  
8 happen does not mean it's probably going to. Whatever  
9 the word probable means to you, it cannot mean something  
10 as great as a certainty; because something could  
11 probably happen does not mean that it's certain to  
12 happen.

13 Now let's talk about the word probability  
14 and talk about the context within which we're using it  
15 in. The State is being required to prove to you the  
16 existence of the fact that the defendant is a future  
17 threat to society. That's paraphrasing. Can you see  
18 how grossly unfair it would be to a defendant if the  
19 State only had to prove the existence of a possibility  
20 that a defendant would be a future threat to society?  
21 Because obviously, it's possible that you three and  
22 myself could be threats to society. Probably a greater  
23 possibility that I would be than you would. But at any  
24 rate, the point being, anything is possible.

25 The flip side of that is, can you see how



15

1 grossly unfair it would be to the State if the law  
2 required them to prove to a certainty that the defendant  
3 would be a future threat to society? So what we did --  
4 and it doesn't take a Rhodes scholar to figure it out.  
5 We simply split the baby and cut it right down the  
6 middle. Probability. If probability to you means  
7 something more likely to happen than not, that's fine.  
8 If it's something different from them, that's just fine,  
9 too, as long as whatever probability does mean to you,  
10 it means something more than a possibility, but not  
11 something as high as a certainty. Probability that the  
12 defendant would commit criminal acts of violence. The  
13 State, in order to obtain a yes answer to this question,  
14 is not required to prove the existence of a probability  
15 that a defendant would commit a specific crime in the  
16 future. The State is obligated to prove that a  
17 defendant on trial would probably commit a certain  
18 category of crimes.

19

20 For example, it is not required the State  
21 prove the existence of a probability that a defendant  
22 would commit future capital murders. Certainly if that  
23 test exists, the State's entitled to present it to you.  
24 But we're talking about conduct that amounts to a crime,  
25 the kind of crime -- it's kind of a crime of violence,  
and the crime of violence can either be as to persons or

16

1 as to property, because that doesn't say. It talks  
2 about criminal acts of violence. We're talking about  
3 capital murders, murders, assaults, rapes, robberies,  
4 kidnapping, all criminal acts of violence as to persons.  
5 Criminal acts of violence as to property could be  
6 arsons, the burning of somebody's building or car or  
7 house, certain kinds of burglaries that require breaking  
8 to get either into a building or onto property. The  
9 taking of a club, beating in the windshield of a  
10 vehicle.

11

12 It is that category of conduct that the  
13 State must prove to you beyond a reasonable doubt in the  
14 existence of a probability that would be committed by a  
15 defendant, not a specific crime from within that  
16 category. And these criminal acts of violence must be  
17 such that they constitute a continuing threat to  
18 society.

19

20 The word society is not going to be  
21 defined for you; but I'd ask you to consider making a  
22 distinction, if you feel comfortable with the  
23 distinction, between the word society and the word  
24 community. We all live in different communities, all of  
25 our communities. And I say that because quite often  
when we think of society, the first thing we do think of  
is people that we work with, family members, neighbors,

17

1 people that we come in contact with.

2

3 But the truth of the matter is the people  
4 that we don't see are also a piece of society. And I  
5 say that from the standpoint, people behind the walls of  
6 the penitentiary are also a piece of society. We know  
7 that's got to be the case, because it -- if it weren't,  
8 the woman who is the school teacher, whoever she is or  
9 wherever she is, she teaches school behind the walls of  
10 the penitentiary. When she punches her little clock in  
11 at 8:00 o'clock in the morning to go behind the walls to  
12 do her job, she does not lose her right to be free from  
13 criminal acts of violence while she's back there doing  
14 her job. And if she escapes at the end of her workday  
15 with her life, once she gets out in the free world, she  
16 reapplies her right to be -- that's preposterous.

16

17 The point being, the people behind the  
18 walls of the penitentiary are a part of society. The  
19 medical personnel, the directors, the teachers, the  
20 wardens, the guards, whoever they all are. And even the  
21 inmates -- I shouldn't say even -- but the inmates,  
22 also, are a piece of society; because if we ever thought  
23 or hoped that rehabilitation was a possibility, it's  
24 never going to be a possibility if we don't protect the  
25 inmates from criminal acts of violence, or if they don't  
have the right to be free from criminal acts of

18

1 violence.

2

3 So, what I'm simply saying is, as used in  
4 this context, society can mean all the people all the  
5 time in all the places. Because if it did not mean  
6 that, then that question would be that these criminal  
7 acts of violence would constitute a continuing threat to  
8 the citizens of Harris County, Texas. And it does not  
9 say that at all. So that's the first question. Again,  
10 based upon how you evaluate the evidence in the case,  
11 you'll answer the question either yes or no.

11

12 If your jury answers that question no, the  
13 case is over; because a life sentence is going to be  
14 imposed, because there is no way you could answer that  
15 second question, ever bring the possibility of the death  
16 sentence back into play. Because it takes a yes and a  
17 no for that, a no to the first one. Any questions about  
18 the first question?

18

19 Okay. Let's go to the second question.

19

20 And before we get to the second question, let's  
21 visualize in our minds where a jury would necessarily  
22 have to be before they take up the second question.  
23 First off, necessarily, they would have had to have  
24 found the defendant guilty of capital murder. Because  
25 if they had not, we'd never get to these questions in  
the first place.

19

1 Secondly, a jury necessarily would have  
2 had to have answered yes to the first question; because  
3 if they answered no, we'd never get to the second  
4 question. So what we're saying is when a jury takes up  
5 the second question, they have unanimously been  
6 consistent voting in such a way that the defendant's  
7 going to be sentenced to death. The second question  
8 asks you -- and these are my words -- are you guys  
9 really satisfied that's really what you want to do? It  
10 gives you a chance to go back over all the testimony in  
11 the case to satisfy yourself as to whether there were or  
12 are not any unique features that rise to the level that  
13 makes you think that death penalty ought to be withdrawn  
14 and in its place substituted a life sentence.

15 And we talked about the second question.  
16 We talked about -- before we go into detail, let's talk  
17 about what's not in the second question. Nowhere in the  
18 second question do you see the phrase, Do you find from  
19 the evidence beyond a reasonable doubt? So that means  
20 the State doesn't have to prove to you what the answer  
21 to that question should be. Well, we know from our  
22 conversation the other day that the defendant never has  
23 to prove to you anything, because the defendant is the  
24 one that's on trial.

25 Well, if the State doesn't have to prove

21

1 Obviously, the conduct is not excused; because the  
2 defendant's been found guilty, and the very least that's  
3 going to happen to him is a life sentence. We're not  
4 talking about anything of that sort. We're talking  
5 about, is there some unique feature in the case, whether  
6 it has to do with the defendant, himself, his character,  
7 his background, his history, something to do with the  
8 victim in the case, something to do with the  
9 circumstances of the offense. Some unique feature that  
10 makes you believe a life sentence would be more  
11 appropriate than a death sentence.

12 The reason mitigating -- the word  
13 mitigating as used in this second question is not going  
14 to be defined for you; because what might be mitigating  
15 to one might not be mitigating to another. We've  
16 probably seen -- I'm sure you've heard of some times  
17 where there may be evidence in a particular trial that  
18 the defendant on trial is -- let's just say seventeen.  
19 And I'm not talking about this case. I'm dreaming up  
20 some case. Some folks might tend to believe that  
21 because the person is seventeen years old, comparative  
22 youthfulness, not emotionally developed to make  
23 particularly intelligent decisions. Some folks on a  
24 jury may think that tends to be mitigating. Others  
25 might say, Well, no. If that person commits an act this

20

1 what the answer to that second question should be and  
2 they don't, and if the defendant doesn't have to prove  
3 to you what the answer to that second question should be  
4 and they don't, that means necessarily that the law  
5 understands that there may be a great number of cases  
6 where there is absolutely no testimony of a mitigating  
7 nature in the case, because nobody's required to put it  
8 there. The only requirement that the second question  
9 imposes is that the jury go back and review all the  
10 evidence in the case to see if there is any mitigating  
11 evidence there. Do you see the distinction?

12 The first half of the second question, as  
13 we talked earlier, is simply an instruction to the jury  
14 to go back over every single bit of testimony in the  
15 case; first phase of the trial, second phase of the  
16 trial, to ask yourselves this question: And this is the  
17 way I phrased it and not what the question asks. Do you  
18 find that there is a good enough reason in the evidence  
19 in the case to withdraw the death sentence that  
20 heretofore you had imposed and replace it with a life  
21 sentence? What's it take to be good?

22 We're talking about mitigating here. When  
23 we use the word mitigating in this context, we're  
24 talking about a reason to reduce the sentence from death  
25 to life. We're not talking about excusing conduct.

22

1 bad at an age that young, then we've lost that person  
2 anyway. People are looking at exactly the same evidence  
3 and just viewing it from a different standpoint.

4 In some case, maybe you would have  
5 testimony about the defendant's mental retardation, if  
6 there is any. Sometimes some jurors might think that's  
7 mitigating. Sometime others might not. A whole batch  
8 of other jurors might say, well, wait a second. Doesn't  
9 it make a difference as to how severely the retardation  
10 is? In other words, is it borderline retarded? Is it  
11 significantly retarded? Would that in -- and whether  
12 it was or wasn't, or whichever it was, I should say,  
13 that might make the difference as to whether it was  
14 sufficient mitigating evidence to withdraw the sentence.

15 You might have in another case a guy that  
16 was -- guy who was a defendant on trial, who had been in  
17 Vietnam, been in Desert Storm, and got himself all  
18 screwed up when he got out, never been in any trouble,  
19 just was absolutely aimless, directionless, and a week  
20 before the crime occurred that caused the defendant to  
21 go on trial for capital murder, he was driving down the  
22 street, saw a fire in an apartment complex, went over,  
23 saved a couple of kids who certainly would have burned  
24 to death, but for the disregard of his own personal  
25 safety.

23

1 You might find that to be a feature or  
2 character as to a defendant's life that might be  
3 sufficient to cause you to think, or maybe as to this  
4 guy on the whole -- that's your calling, but that's the  
5 kind of stuff we're talking about. And the whole idea  
6 is, first off, to search the case over and see, is there  
7 any mitigating evidence? The answer is no. The answer  
8 to that question is no. If you say, yes, there is  
9 mitigating evidence in the case.

10

Your next decision to make is, all right.  
11 Is this mitigating evidence sufficient to make us think  
12 that we ought to withdraw the death sentence that we  
13 have heretofore voted on and replace it with a life  
14 sentence. And if your answer to that question is yes or  
15 answer to the whole question is yes, those are the  
16 questions. Any questions about the questions? So what  
17 we can see is each of the three decisions that a jury  
18 makes is independent of the other two. Just because you  
19 find somebody guilty of capital murder, just because you  
20 answer yes to Question Number One, has absolutely no  
21 bearing, in and of itself, as to how Question Number Two  
22 should be answered. It's kind of like all the evidence  
23 in the case is inside a triangle, and each of three  
24 points of the triangle is where the question is, and  
25 each question is just simply remarkably different. And

24

1 while you explore the same pile of information to get  
2 your answer, each of the questions is so different that  
3 the answer to the presiding question, in and of itself,  
4 can't possibly direct what the answer to the next  
5 question should be. Does that make any sense at all?

6

We talked about if the answer to the  
7 questions are yes and no, that's death. Anything else  
8 is life. We know what a death sentence is, but  
9 sometimes we have some confusion about what a life  
10 sentence is. And I will tell you in the Court's charge  
11 and I'll tell you now, that in the event -- in the event  
12 this defendant is convicted of capital murder, and in  
13 the event these questions are answered in such a way  
14 that the life sentence -- a life sentence is imposed,  
15 the law says this defendant cannot be considered for  
16 parole, cannot become eligible for parole until he has  
17 actually served forty years of his sentence. And that's  
18 day for day, week for week, month for month, year for  
19 year. And another way to put it is we're talking about  
20 the Year 2039.

21

Now, what happens at 2039? I don't know.  
22 What I do know is that whether the defendant is not  
23 awarded parole will depend upon evaluations made by  
24 prison authorities. That is to say, what kind of person  
25 was he during his forty years here? Those evaluations

25

1 will be directed to or sent to the Board of Pardons and  
2 Paroles. Board of Pardons and Paroles may follow those  
3 evaluations. They may disregard them. Who knows?

4

But the Board of Pardons and Paroles is  
5 obligated to make recommendations as to whether to or to  
6 not award parole to a person to the governor of the  
7 State of Texas. In the Year 2039, I haven't the  
8 foggiest notion as to who the governor in this state is  
9 going to be. The governor in this state can follow  
10 those recommendations, disregard them, and completely  
11 make a political decision.

12

Do you know what he or she will do? But  
13 the point I'm getting at is this: The variables that  
14 exist after the expiration of forty years are so great  
15 that they cannot be taken into account during the course  
16 of the trial today. These questions are entitled to  
17 have their answers given on the basis of the evidence as  
18 presented to you in the case. Whether parole -- excuse  
19 me. The fact that after forty years a person becomes  
20 eligible for parole consideration has absolutely nothing  
21 to do with whether parole will or will not be granted.  
22 As to one hypothetical defendant, it might very well be  
23 after forty years, that that person is denied parole for  
24 the rest of his life and breathes his very last natural  
25 breath of air behind the walls of the penitentiary.

26

1 On the other hand, it's perfectly  
2 possible another hypothetical defendant at the  
3 expiration of forty years in this situation may be  
4 awarded parole. I don't know. But what I do want you  
5 to know is you cannot apply the variables that come into  
6 play at the expiration of forty years into your  
7 decision-making process in this case. But I do want  
8 you, also, to be aware of the fact that we know there  
9 are some people who believe this to be the case. Don't  
10 want somebody back in the jury room saying to  
11 themselves, well, if you've been hearing that a person  
12 on a life sentence gets paroled at the end of five  
13 years, that being the case, I'm never going to answer  
14 these questions in such a way a life sentence is  
15 imposed; because I don't want anybody out in five years.

16

I'm telling you, that's not the case.  
17 That's simply not the case. And it is for that purpose  
18 only as to why I'm telling you what the rule is.  
19 Anybody have any questions about that?

20

Okay. Let's get off the capital murder  
21 business for just a second; but before we do, let's --  
22 we touched on very briefly the other day what capital  
23 was. Capital murder always requires the intentional  
24 murder; that is to say, the intentional taking of a life  
25 of a human being without any legal justification and



27

1 without any legal excuse. That necessarily means it  
2 can't be self-defense, because self-defense is a legal  
3 justification. That necessarily means it can't be an  
4 accident; because if it was an accident, it wouldn't  
5 have been intentional. So we're talking about somebody  
6 that wants to accomplish some goal. And to go out, go  
7 and accomplish that goal, they get a gun and shoot  
8 somebody, if that's the case.

9 But this intentional taking of another  
10 life without any legal justification or legal excuse has  
11 got to be committed along with or during the course of  
12 the commission of another specific felony for it to be  
13 capital murder. In our case we have two different  
14 things. We have a kidnapping being the other felony in  
15 one case, and we have another murder, another  
16 intentional murder, felony in another case. So we've  
17 got two or more people killed during the same  
18 transaction and murder during the course of a  
19 kidnapping. That's what the allegations are in this  
20 case, as you can see already.

21 And what if a jury didn't believe beyond a  
22 reasonable doubt that the intentional murder was  
23 committed during kidnapping? They believe the  
24 intentional murder, but not the kidnapping. What if, on  
25 the other hand, the jury believed that one of these

28

1 intentional murders -- one of these murders was  
2 intentional, and it was without legal justification and  
3 legal excuse. But the other one was done in  
4 self-defense; therefore, it was not a murder because it  
5 was legally justified. So what is it telling you, the  
6 State, in order to obtain a conviction for capital  
7 murder, must prove beyond a reasonable doubt the  
8 existence of both of those features. The intentional  
9 murder and during the course of the other felony. Are  
10 we together so far?

11 Anytime the State's required to prove  
12 beyond a reasonable doubt the existence of two things,  
13 three possible results can occur. One possible result  
14 is they can. And if they can and do, the jury's  
15 obligated to find the defendant guilty of capital  
16 murder.

17 Possible outcome number two: They can't  
18 prove beyond a reasonable doubt the existence. And if  
19 that's the case, the jury's obligation to find the  
20 defendant not guilty of anything.

21 Possible outcome number three: They can  
22 prove the existence of the intentional murder beyond a  
23 reasonable doubt, but not the existence of the other  
24 felony. If that were to happen -- I say happen -- if  
25 the evidence in the case or the testimony were to

29

1 suggest that, I would be obligated to give you a third  
2 possibility. You would have guilty of capital murder,  
3 not guilty of anything. The third possibility would be,  
4 is the defendant guilty of murder? That is to say, the  
5 intentional taking of the life of a human being without  
6 a legal justification or excuse, but not during the  
7 course of another felony. What we're talking about is a  
8 lesser included offense, or a smaller offense carved out  
9 of a greater offense, the greater offense being the  
10 capital murder, intentional murder during the other  
11 felony.

12 They don't prove the other felony. Piece  
13 of pie out of the whole pie. If a person in the State  
14 of Texas is convicted of murder, the range of punishment  
15 is simply remarkably different and far more broad than  
16 the life or death that's available for a person  
17 convicted of capital murder. And I'm not saying this is  
18 going to come into play in this case. I am saying to  
19 you it is, however, a theoretical possibility. In the  
20 State of Texas, if a person is convicted of murder, that  
21 person can be punished by confinement in the  
22 penitentiary for life, or by confinement in the  
23 penitentiary for any number of years, as long as it's  
24 not less than five or more than ninety-nine. And the  
25 jury can, if they think it's appropriate, impose a fine

30

1 in some amount, as long as the amount does not exceed  
2 \$10,000.

3 For the purpose of our conversation here,  
4 this evidence, we're going to blow off the fine. That's  
5 more of a nuisance than it is anything else. The range  
6 is so broad, because everything is always so different.  
7 When you think of murder, perhaps you think it was a  
8 specific set of circumstances, which may be absolutely  
9 brutal, horrible, vicious, all that stuff, but there are  
10 also circumstances because it's got all sorts of people  
11 who will differ. You've got the defendants, people who  
12 may be a five-time convict. You've got people who are  
13 defendants for whom the conduct in this case is simply  
14 an aberration and completely inconsistent with the way  
15 they've lived their life up to now. That might make a  
16 difference to you in some cases. In other cases it  
17 might not make any difference to you. Because you see,  
18 you've got to give you the room to roam; so if it does  
19 make a difference, you can make the adjustments you  
20 think is important.

21 For example, you would be -- seventy-five-  
22 year-old couple been married for fifty years. They love  
23 each other tremendously. And the wife is ill. She's on  
24 a life support system, and she doesn't want to go  
25 through the misery of the suffering and humility and



31

1 indignity of being on that machine. She's asked her  
2 husband for days and days to please pull the plug and  
3 let her go in peace. He has prayed about it, thought  
4 about it, talked to his minister about it, talked to  
5 everybody he can about it. And finally, one day, he  
6 just walks over while she's asleep and pulls the plug  
7 and she expired.

8 Without getting into the reality of that,  
9 in this state that's murder. That's the intentional  
10 taking of the life of a human being without any legal  
11 justification, without any legal excuse. Now while that  
12 is the case, maybe you wouldn't think that that  
13 seventy-five-year-old man would get a life sentence from  
14 having done that, because he didn't do it out of anger.  
15 Maybe you do think he ought to get a life sentence, but  
16 that would be your call. But if you thought you've got  
17 to give something different, we've got to give you the  
18 room so you can move.

19 So, my question to you is this: Assume  
20 with me for just a second that you're a juror in some  
21 imaginary capital murder case. You go out and  
22 deliberate; and your jury unanimously determines that  
23 the defendant on trial is not guilty of capital murder,  
24 but your jury unanimously does determine that the  
25 defendant on trial is guilty of murder. State's proved

32

1 one of them, not both of them.

2 Your jury comes back. You hear evidence  
3 at the second phase of the trial. You go out and begin  
4 your deliberations as to punishment. Whatever evidence  
5 you heard at the second phase doesn't make any  
6 difference. Let's just say this: That the evidence in  
7 the second phase makes us believe a life sentence could  
8 be proper. Is there anybody here who would not consider  
9 giving that imaginary defendant's punishment or  
10 assessing -- consider assessing that defendant's  
11 punishment at confinement in the penitentiary for life,  
12 if you thought based upon the uniqueness of the  
13 testimony in this case, whatever that testimony was,  
14 that that was the right result to reach? Anybody here  
15 who would refuse to consider that as a legitimate  
16 sentencing option if you thought the circumstance  
17 deserved it? Okay. I gather that you wouldn't.

18 We'll take that same question and flip it.  
19 The jury in a capital murder case, you find the  
20 defendant not guilty of capital murder. You find him  
21 guilty of murder. You come back and accept the evidence  
22 at the second phase of the trial, whatever that was; but  
23 when you leave, after having heard everything, you say  
24 to yourself, I think in this case five years is the  
25 right thing to do. Is there anybody here who could not

33

1 consider assessing that imaginary defendant's punishment  
2 at confinement in the pen for five years?

3 Now if you thought, based upon whatever  
4 the uniqueness of the testimony in that case, that  
5 was -- that was the right result to reach -- and I'm not  
6 asking how would you do either one of them? I'm going  
7 to take each of them as a legitimate sentencing option.  
8 If the facts and circumstances deserve it in your mind,  
9 or anything in between, and just ride up and down the  
10 scale of punishment. Because do you see how grossly  
11 unjust it would be for us -- meaning me -- to ask you  
12 folks to give of your time to come down here, sit as  
13 jurors, and dictate to you the value of every dead body;  
14 because the value of every dead body depends on, depends  
15 on, A, who it belonged to while it was living; and, B,  
16 the circumstances that caused the body to come down.  
17 All of these features are integral parts. What  
18 punishment should we impose? And that's why we don't  
19 have a specific punishment, so the jury can be  
20 comfortable that the facts and circumstances of the case  
21 fit the punishment. Any questions about that?

22 Two other quick areas. Can you see why we  
23 didn't talk about this the other day? I'm not going to  
24 talk about this in the legal sense. I'm going to talk  
25 to you about it in its concept. We have something in

34

1 our law that says if you have two or more people,  
2 multiple people who get together and conspire to commit  
3 a felony, commit a crime, and if they accomplish that  
4 conspiracy and do commit the crime, that a conviction of  
5 one of those codefendants cannot be had solely, only,  
6 and exclusively upon the testimony of another  
7 codefendant.

8 There, instead, must be some additional  
9 supporting or corroborating testimony from some  
10 independent source that rises to the level that it tends  
11 to connect the defendant on trial to the commission of  
12 the crime. Now that other evidence from some  
13 independent source -- it could be another witness in a  
14 case; it could be physical evidence; it could be almost  
15 anything. And the other independent evidence simply --  
16 independent evidence, I should say, does not, itself,  
17 have to prove a defendant's guilt beyond a reasonable  
18 doubt. It only needs to tend to connect the defendant  
19 to the committing of the crime.

20 Oh, for example, we know historically, at  
21 least, of DNA and fingerprints. We've always known that  
22 to be just absolutely the best singular identifying  
23 feature to sort out human beings' identity. Anything  
24 else? Let's say somebody else and I agree to rob a  
25 bank. I'm the driver. He's the getaway -- I mean, I'm

35

1 the getaway driver. He's the robber. I pull up to the  
2 bank. He runs in, does the robbery, comes out, off we  
3 go. He gets caught, and he fingers me.

4 Well, no one's seen me, because I stayed  
5 in the car; and that poor klutz got the whole problem.  
6 If there is no other independent evidence that tends to  
7 connect me to the crime to support his testimony, I  
8 don't get convicted. If, however, there is other  
9 independent evidence tending to connect me to the crime  
10 from some other source, I do get convicted.

11 For example, if on the bank bag that was  
12 taken from the bank my fingerprints are on it, the  
13 fingerprint that's on it does not necessarily indicate  
14 when it was that I touched that bank bag. The  
15 fingerprint could have been on it before the robbery  
16 occurred, theoretically. But can you see that my  
17 fingerprint being on the bag does tend to connect me to  
18 the commission of that robbery? That's what we're  
19 talking about. I don't know if that's going to come  
20 into play in this case. But is there anybody here, any  
21 of the three of you, who have any disagreement?

22 One last area. We have two types of  
23 evidence that exist in a trial of a case; direct  
24 evidence and circumstantial evidence. The law simply  
25 doesn't care what kind of evidence is used in a case.

36

1 You can have some cases that are exclusively direct  
2 evidence, some exclusively circumstantial. Direct  
3 evidence means somebody saw a crime occur, or the  
4 defendant confesses to having committed the crime.  
5 Circumstantial evidence means anything else. It's the  
6 proof of circumstance surrounding the commission of a  
7 crime that when interwoven with other circumstances  
8 presented to a jury tend to show the defendant on trial  
9 did commit the crime.

10 As I say, the law doesn't care whether  
11 testimony is evidence -- and I should say direct or  
12 circumstantial -- just like the law doesn't care how  
13 many witnesses there must be in a case for there to be a  
14 conviction; because the Rule is exactly the same as to  
15 each. The number of witnesses makes no difference. The  
16 type of evidence makes no difference, as long as either  
17 the number of witnesses or the type of evidence, et  
18 cetera, established in a jury's mind beyond a reasonable  
19 doubt the defendant's guilt. You can have one witness  
20 who can do that. You can have twenty-seven witnesses  
21 who can't do that. It depends on them and what they  
22 saw.

23 Direct evidence. For example, down here  
24 at Enron Field, you might have some guy down there who  
25 is shot with a gun, a handgun, virtually face-to-face.

37

1 You got three absolute derelict drunks laying down  
2 there, each of them just a whisper away from passing  
3 out. And they see a defendant shoot the victim. All  
4 three of those drunks come, and they testify to a jury,  
5 this is what I saw. I was drunker than Cooter Brown,  
6 and I just about passed out. In fact, I did after. Can  
7 you see that even though that's direct testimony,  
8 eyewitness testimony, can you see how a jury may not  
9 believe them beyond a reasonable doubt?

10 Now let's talk that same dead body case,  
11 and let's say you have three people who just happen to  
12 be walking by. One guy sees a defendant -- sees the  
13 defendant on trial, whoever that defendant is, with a  
14 gun, a handgun in his hand, keeps on walking. The other  
15 guy hears a gunshot. After he hears the gunshot, he  
16 turns and he sees the defendant standing over this body  
17 that's laying on the ground bleeding. He just keeps on  
18 walking along. He doesn't see any shots. Third witness  
19 sees the defendant about twenty yards from where the  
20 previous witness saw him, gun still in his hand, calls  
21 the police. The police come and arrest him. The gun,  
22 it is determined ballistically, fired the bullet, caused  
23 the bullet to go into the man's body that caused his  
24 death. Nobody actually ever saw the defendant shoot the  
25 victim. But can you see under those circumstances how a

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1 jury may very well believe beyond a reasonable doubt  
2 that the defendant on trial was, in fact, guilty of that  
3 murder, even though that testimony was purely  
4 circumstantial? So if it's not direct or circumstantial  
5 to this issue, does the jury believe the testimony  
6 beyond a reasonable doubt?

7 But we hear sometimes people say, Oh, I  
8 couldn't ever convict anybody on circumstantial  
9 evidence. They have no idea what they're saying.  
10 That's just repeating something they hear on television,  
11 Judge Judy or something. And the truth of the matter  
12 is, as wonderful as an identifying feature as a  
13 fingerprint, a fingerprint is circumstantial evidence;  
14 because we know who the fingerprints belong to. But we  
15 don't know, first off, when the fingerprint was placed  
16 on the item. And secondly, we don't know where the item  
17 was when the fingerprint was placed on there.

18 Now if it's an immoveable object,  
19 obviously we can figure it's going to depend where it  
20 was; but that doesn't account for when the print was put  
21 there. If it was a moveable object, such as a handgun,  
22 who would know where I was when I put the print on it?  
23 So, what we're simply asking is this: I don't know this  
24 is going to be a situation in this case. But again, I  
25 know it's theoretically possible. If you're a juror in

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1 the case and the testimony in the case is exclusively  
2 circumstantial, but if you believe that circumstantial  
3 evidence beyond a reasonable doubt, is there anybody  
4 here who would refuse to find that imaginary defendant  
5 guilty, even though the testimony in the case was  
6 circumstantial and you believed it beyond a reasonable  
7 doubt? I guess what I'm really trying to say is, is  
8 there anybody here who would demand direct evidence?  
9 Now you have just finished your first year in law  
10 school. What questions do you have for me?

11

Let me tell you what we're going to do.

12

We're going to, in a couple of minutes, begin talking to  
13 you individually. We're going to do it with -- as  
14 quickly as we can; because in about an hour and fifteen  
15 minutes, we have another sixty folks like we had with  
16 you coming in. But I don't want to do that so quickly  
17 that I might not have a chance to follow the connections  
18 and so forth that we're trying to make in the case.

19

I think -- and this is just my thought --  
20 but I think the purpose of this phase of the trial is  
21 meant to do two things. One to talk to all of you about  
22 the possible rules, the laws, that can come into play to  
23 see if you have any disagreement with them that rises to  
24 the level that if you were a juror in the case, I would  
25 not feel that you were morally able to, A, support, B,

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reinforce those laws. Is there anybody here who's heard  
2 anything from Monday or today that you have any  
3 disagreement or dispute with that rises to the level  
4 that you wouldn't follow that rule if it did come into  
5 play?

6

Okay. Second thing I think this is about  
7 is to make sure -- you to make sure for yourself, the  
8 lawyers to also make sure that if you were a juror in a  
9 case, you start off the case, I mean, just point blank,  
10 no preconceived idea as to what result you're going to  
11 reach or where you're going to go, and just let the  
12 evidence act like kind of a road that takes you to  
13 wherever it is you're going to go. When you get there,  
14 decide what it is you're going to do. And if your  
15 decision, after you hear all the evidence, is such that  
16 causes you to answer the first verdict as a guilty, do  
17 it. Nothing to it. Not guilty of capital murder, but  
18 guilty of murder. He did it.

19

The second phase of the trial, if you find  
20 somebody guilty of capital murder, answer that first  
21 question however you think the evidence suggested that  
22 you should answer it. Answer the second question  
23 however you think the evidence suggests you should  
24 answer it. And if the answers wind up being a death  
25 sentence, that's a deal. If they wind up being a life

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1 sentence, that's a deal. But don't put yourself in  
2 somebody else's shoes.

3

For example, if in some imaginary case you  
4 are convinced there is some sloppy police work -- and  
5 I'm not claiming that's the case here. Just using this  
6 as an example. You can't substitute yourself for them.  
7 You've got to take what you're given. If what you're  
8 given is enough to prove a person's guilt beyond a  
9 reasonable doubt, it's your obligation to do that. If  
10 what you're given is not enough to prove a person's  
11 guilt beyond a reasonable doubt, then it's your  
12 obligation to find him not guilty. It's not your job as  
13 a juror to help one side out or help the other side out.  
14 Your job as a juror is to evaluate the information they  
15 give to you and come up with what you think is the right  
16 result to reach.

17

Now, that's the deal. And I will tell you  
18 right now, if I were one of you three folks and if I  
19 didn't spend any time down here at the courthouse, one  
20 of the things that I would have found out right now that  
21 would have just simply blown my mind would be this: Are  
22 you telling me, if I heard the evidence in that case and  
23 it was such that I wound up believing the defendant was  
24 guilty of capital murder, and if I came back at the  
25 second phase of the trial, and after having heard more

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1 evidence, if I found out that that defendant on trial  
2 was, in fact, a future danger to society and I answered  
3 that first question yes, guilty of capital murder and a  
4 future danger, you're telling me then that that doesn't  
5 mean that the death penalty is going to be imposed? And  
6 that's exactly what I'm telling you, because the case  
7 isn't over because you haven't answered the second  
8 question.

9

Those two verdicts, guilty of capital  
10 murder and yes to the first question, there is still the  
11 option that you've explored the testimony in the case to  
12 see is there is any feature within the case that makes  
13 you believe that a life sentence would be a more  
14 appropriate verdict than a death sentence? So the  
15 case -- so I watched the whole thing last night about  
16 Yogi Berra. It ain't over till it's over, and that's  
17 just about what this is. And it's not over till you get  
18 past Number Two. Is there anybody here -- because that  
19 almost doesn't make sense to us in the way we do things.

20

But think of it this way: I used this  
21 example yesterday, and I wish I hadn't; but my mind is  
22 not fresh enough to come up with a new one today. There  
23 are three different decisions to make. Just because you  
24 made two of them doesn't mean that you know what the  
25 answer to the third one is without investigating the



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1 circumstance. If you're going to go buy a car, and if  
2 you ask the driver -- the car salesman, does the car  
3 have a motor? The car has got a great motor. Has the  
4 car got a steering wheel? Car got a wonderful steering  
5 wheel. You can't presume that the car's got wheels.  
6 And I apologize for doing this. They heard it  
7 yesterday, and you guys are just being nice and batting  
8 your eyes and shaking your heads. And even I don't like  
9 it; but point of it is just because you got two answers,  
10 that does not dictate the third. And each side has the  
11 right to have you hold out on committing yourself to  
12 what the answer to that third -- or that second question  
13 should be, that being the third decision, is what I'm  
14 trying to say, until you've gone back over all the  
15 evidence in the case. Does that cause any problems to  
16 anybody?

17 Is there anybody here that has anything in  
18 your personal life, anything in your professional life,  
19 or anything at all that you can think of that, in your  
20 mind, would interfere with your ability to be a juror in  
21 this case during the time frame we've talked about?  
22 What is it?

23 VENIREPERSON: I'm a contract worker, and  
24 I've been off for five weeks. And I've been told by my  
25 employer that there is a possibility I'll be called back

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1 in the next week or so, and it would cause a financial  
2 hardship.

3 THE COURT: When will we know?

4 VENIREPERSON: You mean, if I'm going to  
5 be called back?

6 THE COURT: Yes. Or is that your  
7 question, too?

8 VENIREPERSON: That's my question. I was  
9 told five weeks ago it was going to be two days; I was  
10 going to be off for two days. So I've been off for five  
11 weeks, and I may not be called back for six weeks.

12 THE COURT: I understand. Thank you for  
13 sharing that with us. I don't know what we're going to  
14 do, but we're going to do something. Anybody else have  
15 a question? Okay. If you would, retire to the  
16 hallway. We'll get you in here as quickly as we can.

17 CHARLES GILBERT,  
18 having been first duly sworn, testified as follows:

19 VOIR DIRE EXAMINATION

20 BY THE COURT:

21 Q. Are you well today, I hope?

22 A. Yes, sir.

23 Q. Good. Do you have any questions at all for me?

24 A. No, sir, I think I understood your charges, or  
25 so forth, whatever the term is for it.

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1 Q. Thank you.

2 THE COURT: Mr. McClellan, if you would,  
3 please.

4 MR. MCCLELLAN: Thank you, Your Honor.

5 VOIR DIRE EXAMINATION

6 BY MR. MCCLELLAN:

7 Q. Mr. Gilbert, my name is Lyn McClellan. And  
8 along with Claire Connors, we represent the State of  
9 Texas in this case. I want to go over your  
10 questionnaire and follow up on some of your answers  
11 there and talk to you about certain aspects of the law  
12 that apply in a case like this?

13 A. Yes, sir.

14 Q. First of all, can you just kind of tell me in  
15 your own words, what is your opinion about the death  
16 penalty?

17 A. I think in instances that it's an appropriate  
18 sentence.

19 Q. What type of instances come to your mind when  
20 you think of instances where you think it's appropriate?

21 A. Well, with the Judge's instructions, I think I  
22 understood better about a murder charge and the  
23 consequences of that as opposed to a capital murder  
24 charge on it. So I believe the way it was explained  
25 this morning as to a capital murder charge, that that

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1 would be appropriate.

2 Q. Where it's murder plus some aggravating  
3 circumstance?

4 A. Additional crime committed at the same time was  
5 the way I understood that this morning, yes, sir.

6 Q. So you don't have a problem with the way it's  
7 set up?

8 A. No, sir.

9 Q. Some people think it ought to also be available  
10 for murder, though it's not. And that's okay if they  
11 think that, just as long as they can follow whatever the  
12 law is the Court gives them.

13 A. Yes, sir.

14 Q. Do you think possibly that capital murder  
15 punishment should be expanded to include more crime than  
16 it now includes.

17 A. Well, I thought capital murder is capital  
18 murder. Maybe I'm missing the question.

19 Q. Some people think, well, it's murder plus  
20 another crime. Other people think, well, I think it  
21 ought to be just for murder. There is murders by  
22 themselves that are so heinous that it may be  
23 appropriate, in my mind. If I were to change the law, I  
24 might change it to where it would also be available for  
25 murder. What do you think about that?



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1 A. In your context there was a heinous murder-type  
2 crime deal on there, that it would be appropriate in  
3 some instances on there; but that's not the law as I  
4 understand.

5 Q. You're right. It's not the law. And you're  
6 right in understanding that what we're talking about,  
7 you jurors who will take an oath to follow the law and a  
8 true verdict render based on the law and the evidence.

9 A. Yes, sir.

10 Q. So what we want to do today is talk to you  
11 about your opinions about whether or not you can follow  
12 the law. If you can't follow the law, we want you to  
13 tell us that. But I assume you're going to be able to  
14 take that oath and follow the law and set aside any  
15 personal opinions you may have that may differ from that  
16 and do whatever the law and the evidence tells you.

17 A. Yes, sir, that is correct.

18 Q. Was there ever a period of time in your life  
19 where you opposed the death penalty, thought it was not  
20 the appropriate thing?

21 A. Not that I can recollect, sir, no, sir.

22 Q. I believe you indicated that you have a brother  
23 who has been to the penitentiary?

24 A. Yes, sir.

25 Q. What kind of case was that?

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1 A. I was in the service when that occurred, and I  
2 think it was a burglary charge. Possibly could have  
3 been a robbery, something along the lines of that on  
4 there. That was back in the early --

5 Q. I'm sorry, go ahead.

6 A. That was back in the early '70's, just prior to  
7 me being released from the service.

8 Q. Was he -- your brother older?

9 A. No, sir, he's approximately four years younger  
10 than I am.

11 Q. Assume he's out of the penitentiary?

12 A. Yes, sir, he has been for a number of years.

13 Q. And he's gone on to do other things in his  
14 life?

15 A. I think it helped his life tremendously for his  
16 future at that point in time, sir.

17 Q. Now you also shared with us the fact that, I  
18 guess, your daughter was charged with possession of  
19 cocaine?

20 A. She hasn't been charged with that, no, sir.  
21 She is a recovering addict. This is my opinion. No one  
22 ever really recovers from that. It's kind of like  
23 alcoholism. She has not done coke in a couple of years  
24 at least.

25 Q. I thought there was something in here that you

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1 said she was going to trial?

2 A. That is for child endangerment, sir; and I'll  
3 explain that, too.

4 Q. Okay.

5 A. My daughter has her six children and two sets  
6 of twins, and all these children are pretty young on  
7 there.

8 Q. All right.

9 A. They were at our house one afternoon, and we  
10 have a screened-in back porch, patio, whatever you want  
11 to call it. And my wife had put the youngest set of  
12 twins on the back porch, which they've just turned two  
13 years old recently.

14 Q. Right.

15 A. They either tore one of the screen panels, or  
16 it was torn. They went out and got on the road. The  
17 neighbor found one of them. When my wife and daughter  
18 found out they were missing, which was almost  
19 immediately, they went searching for them and  
20 everything. The lady that found the first baby, one  
21 called the Harris County law; and they came out did a  
22 short investigation on it. Of course, they never left  
23 the immediate area there. But anyways, they -- about  
24 four hours later, they had came back out while my  
25 daughter was still at my house there and had said they

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1 talked to the District Attorney and they had -- the  
2 District Attorney's Office had elected to file charges  
3 on her since she was the parent of the children.

4 Q. All right. Okay. And was that case set for  
5 trial? I don't know when you filled out the  
6 questionnaire.

7 A. That day, which was a week from today last week  
8 on there, they were going to court that day; and it has  
9 been postponed to sometime next month on there. I  
10 expect several different postpones on it. That's my  
11 opinion, anyway.

12 Q. Obviously, the District Attorney's Office, of  
13 which I'm a member of the D.A.'s Office -- our office is  
14 the one that elected to file charges. How would that  
15 affect your ability to be on a jury where we're  
16 presenting evidence?

17 A. I don't think that would bother me at all, sir.  
18 I have some knowledge of the law. Not a professional  
19 law person or anything, but I know how things work. And  
20 just because she's been accused of that doesn't mean  
21 she's guilty.

22 Q. Right. Who is her lawyer?

23 A. I don't know, sir. My wife and my daughter  
24 have been coordinating all of that. My days are pretty  
25 well occupied where I work at.

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1 Q. Work?

2 A. Yes, sir.

3 Q. I understand. You know, as the Court has told  
4 you, that just because someone's convicted of capital  
5 murder, that does not mean, in and of itself, that the  
6 person receives the death penalty. And it depends then  
7 on the circumstances of the crime, the defendant's  
8 character, and his background, and his personal  
9 responsibility for the commission of the crime.

10 A lot of these things are taken into  
11 consideration in determining, one, whether or not he's a  
12 continuing threat to commit future acts of violence, and  
13 two, whether or not there is any mitigating  
14 circumstances that would indicate or lead jurors to  
15 determine that life, as opposed to death, is more  
16 appropriate. If a person was, though, convicted of  
17 capital murder, the intentional taking of another  
18 person's life without any legal justification. We're  
19 not talking accident. We're not talking self-defense.  
20 We're talking intending to kill someone and doing so  
21 during the commission of another crime.

22 A. Uh-huh.

23 Q. What we have alleged here is murder during  
24 kidnapping. We've also alleged in the second paragraph  
25 murder during the course of a murder, which means

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1 killing two or more people during one criminal episode.  
2 If you found someone guilty of that crime, what do you  
3 think would be important in determining whether or not  
4 the person would be a continuing threat or whether or  
5 not circumstances would lend itself to giving life as  
6 opposed to death? What factors do you think would be  
7 important other than the facts of the crime itself that  
8 you've heard? What else do you think would be  
9 important?

10 A. I would say the way that he possibly took the  
11 lives.

12 Q. How the crime was committed?

13 A. Yes, sir. Which type of weapons, whether it  
14 was something possibly like a torture-type deal involved  
15 with it, something along the lines of that.

16 Q. And, of course, during the course of trial,  
17 you'll be able to hear about what happened before,  
18 during, and after the commission of the crime. What  
19 happened before the commission of the crime, you would  
20 be able to find out, was it a spur of the moment act as  
21 a result of something that happened, or was it planned  
22 out ahead of time? What happened during the course of  
23 the crime? You would be able to learn whether or not a  
24 person -- how they actually committed that crime, you  
25 know, how they were involved.

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1 A. Uh-huh.

2 Q. With a getaway driver, like the Judge used in  
3 his example, where the person who pulled the trigger, or  
4 stabbed the person with a knife, or choked with hands,  
5 or whatever the cause of death was. And what happened  
6 after the crime, you'd be able to show if a person  
7 showed a lot of remorse and upset for what he did, or if  
8 he was braggadocious, carefree, didn't care?

9 A. Right.

10 Q. And you think all that information is helpful,  
11 then, in deciding what the punishment ought to be?

12 A. What?

13 Q. You take all you have, that information, and  
14 it's helpful in deciding what a punishment ought to be?

15 A. Well, it would be.

16 Q. Life or death?

17 A. Yes or no. On the first question, yes, sir.

18 Q. You have two daughters; is that correct?

19 A. Yes, sir.

20 Q. Have either of them ever been the victim of any  
21 type of crime?

22 A. Not that I'm aware of, no, sir.

23 Q. Okay. One of the things on mitigation, when it  
24 talks about Special Issue Number Two, you've got  
25 mitigating circumstance. I like to refer to it as

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1 reasons why a person ought to receive life as opposed to  
2 death. Jurors are basically asked to go back and listen  
3 to all the evidence, see what's there, weigh it in their  
4 minds. Is that mitigating or not?

5 For example, you may hear evidence during  
6 a trial a defendant was high on drugs or alcohol when he  
7 committed the crime. One juror may say, I think that's  
8 mitigating; because when you're high on drugs or  
9 alcohol, you do things you wouldn't ordinarily do if you  
10 were not in that condition. Juror Number 2 will say, I  
11 don't think that's mitigating at all; because even  
12 though you do things you wouldn't ordinarily do, you  
13 ought to be responsible for your conduct regardless of  
14 whether you're high on alcohol or not. You may get high  
15 on drugs or alcohol again, go out and commit something  
16 else; or they may know people who have been intoxicated  
17 on drugs or alcohol, and they didn't go out and commit  
18 capital murder.

19 So, why is that a fact? Do you think  
20 people who are intoxicated or high on drugs or alcohol,  
21 whenever they commit a crime, do you think they still  
22 ought to be responsible for their crime?

23 A. Yes, sir, I do. I think that's their free  
24 will, their free choice to take that action, to become  
25 intoxicated or high on drugs there to begin with on

55

1 there.

2 Q. And that's what the law says, that voluntary  
3 intoxication is not a defense to the commission of a  
4 crime. In other words, if someone were to slip  
5 something in a drink you had and you got intoxicated or  
6 something unbeknownst to you; but if it's your own free  
7 will, as you say, to do it, you're still held  
8 responsible.

9 Obviously, some people are smarter than  
10 others. Some people have a lot of trouble in school.  
11 Some people are special ed students. Some are not quite  
12 as bright as others. Do you think that a person's  
13 mental condition, as long as they know right from  
14 wrong -- because if you don't know right from wrong,  
15 then that's insanity and that's a different issue, I  
16 suggest. But as long as you know the difference between  
17 right and wrong, do you think the -- despite the fact  
18 you may be a poor student or not intelligent book-wise,  
19 but you still ought to be held responsible for your  
20 conduct.

21 A. Yes, sir.

22 Q. Some people look at mitigating circumstances  
23 such as, it could be the age of a person. Person could  
24 be a young age, or a person could be a very old age.  
25 And somebody may say, Well, I think that's mitigating

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1 towards a life sentence; because if they're young, they  
2 do things you wouldn't ordinarily do. As you get older,  
3 you get more mature. You make better decisions. You  
4 make bad decisions when you're young, and that's part of  
5 the growing up.

6 Somebody else may say, Well, that may be  
7 true; but a person still ought to be responsible for  
8 their conduct, regardless of what their age is. And if  
9 they've already committed capital murder at this age,  
10 what are they going to do one, ten, or fifteen years  
11 down the road? So you can see then people can look at  
12 the very same piece of evidence and come up with  
13 different opinions. And that's okay; because that's  
14 what Issue Number Two is asking you to do, is to look  
15 back through the evidence and see if there was any  
16 evidence there that mitigates, in your mind. So it  
17 gives you reasons why a person should receive life as  
18 opposed to death. And if there is, that's fine. And  
19 then you determine, is it sufficient to change your  
20 answer? Because if there is not any, then that's fine.  
21 And you don't change your answer, but you're committed  
22 to the search. Any problem with that aspect?

23 A. Any problems with that? No, sir.

24 Q. I mean, as the Judge indicated in his voir  
25 dire, some people say -- it may be common sense to

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1 think, if I find someone guilty of capital murder, then  
2 if I find on Issue Number One on they're going to be a  
3 continuing threat, to a probability, to commit future  
4 acts of violence, why wouldn't this person get the death  
5 penalty?

6 But you're still committed to go through  
7 and answer that last question. Maybe you'd still answer  
8 it in such a way that death applies; but you're  
9 committed to that search, in looking for evidence to see  
10 if there is anything that gives a reason to give life as  
11 opposed to death. But, of course, the law wants you to  
12 be sure that your decision is what you want to make.  
13 You understand how that operates?

14 A. Do I have an opinion?

15 Q. Do you have any problem with that?

16 A. No, sir.

17 Q. Do you think the system, the way it's set up,  
18 is a good system to arrive at these decisions?

19 A. Yeah, I do. In my opinion, I think our legal  
20 system is a just system. Put it that way.

21 Q. Thank you, sir. I appreciate your time, and  
22 I'm going to pass you at this time.

23 THE COURT: All right. Mr. Wentz.

24 VOIR DIRE EXAMINATION

25 BY MR. WENTZ:

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1 Q. As you've been told, my name is Kurt Wentz.  
2 Wayne Hill is not with us for the moment. This is  
3 Charles Mamou. I'm going to talk to you for a brief  
4 period of time, but I would appreciate you continuing to  
5 do something you've already done. And that's not only  
6 just answer my question, but you've already begun to  
7 give the reasons for answering the way you do when you  
8 were talking to Mr. McClellan. I'd like for you, if you  
9 would, to continue to do that as you talk to me.

10 A. Okay.

11 Q. And I think you know already that this type of  
12 trial is different than just about any other type of  
13 trial. It's a very individualized process. That's why  
14 we're talking to you individually. And as you sit here,  
15 you only see one defendant. I think sometimes we have a  
16 tendency to lump and to group people into categories.  
17 And this is only Charles Mamou's case; no one else's.  
18 Could you judge this as his own individual case?

19 A. Yes, sir. He's the one that's on trial. It's  
20 the individual charged here.

21 Q. And I think if you were on trial, you would  
22 consider that to be sort of important for you, too. You  
23 would want to be judged as the person you are, for what  
24 you may or may not have done.

25 A. I want my own day in trial, as the saying goes,

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1 oh, yes, sir.

2 Q. Okay. Fine. You don't have your questionnaire  
3 in front of you, so I'm going to try and go through it  
4 briefly, if I could.

5 MR. WENTZ: May I stand, Your Honor?

6 THE COURT: Yes, sir.

7 Q. (BY MR. WENTZ) One of the questions is Number  
8 25. And you're asked, Have you ever known anyone who  
9 was killed accidentally or otherwise? And you answer,  
10 yes. Could you tell me about that, if you would,  
11 please, sir?

12 A. I have had a suicide, sir. Not in my family.

13 Q. I'm sorry.

14 A. Also, I'll expand on that. When I was in  
15 Vietnam, there was a lot of death, too.

16 Q. Well, you anticipated my next area of inquiry,  
17 because I guess where we are in this time, we see that  
18 question about, Have you been in the military? That's  
19 not checked as much as it used to be. And, in fact,  
20 you're one of the really few people that have checked  
21 that block, so I was going to follow along with that.

22 A. Yes, sir.

23 Q. You've talked to us already that while you were  
24 serving your country that your brother, younger brother,  
25 unfortunately got in some difficulty, that you weren't

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1 people worse. And you say, Yes, you would agree with  
2 that.

3 A. I'm sorry. What did I mark on there?

4 Q. You said you agreed that prison makes convicted  
5 people worse. And I guess what you're saying there is,  
6 That may be a thought that you have had, that your own  
7 personal experience is very different from mine.

8 A. You know, with my personal experience for my  
9 brother, it helped on there, okay. But I hear so many  
10 times now about people that go into prison that are in  
11 there for a short period of time and then come outside  
12 more hardened with more crime capabilities, I would say,  
13 from other people that are in prison and so forth. I  
14 know prison would be very hard for myself.

15 Q. I think I had explained to you, actually, the  
16 full meaning, at the very least, of what a life sentence  
17 means in the context in which you and I are talking  
18 about imprisonment; because we're only talking about two  
19 punishments, life imprisonment and the death penalty.  
20 And, you know, you understand at the very least a life  
21 sentence would be forty years before you can become  
22 eligible for parole. And certainly an individual could  
23 change dramatically over a forty-year period.

24 In fact, I was thinking if you believe  
25 these actuary tables that insurance companies give us,

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1 around for him. And he went to prison and served some  
2 time for a burglary; and I think you've told us that it  
3 helped, in your opinion?

4 A. Uh-huh.

5 Q. First of all, how do you think it helped?

6 A. I think it helped him focus more on his future  
7 instead of just immediate time of day right there, you  
8 know.

9 Q. Okay. Were you and he close? I mean, I know  
10 you had to go away and you didn't have very much choice  
11 in it?

12 A. When we were young, we were very close. As I  
13 got into my teens, there is, like I say, about a  
14 four-year age difference on there. We weren't as close.  
15 I married at a young age, when I was seventeen, and  
16 moved out of the house. So he was still like a preteen  
17 when I moved out. There was a long separation there  
18 where we weren't, and still aren't, intimate like a lot  
19 of brothers, I will say. Yes, sir.

20 Q. One of the things -- and reason I asked you  
21 that is you've seen that prison can be actually -- and  
22 this may sound strange, but I think you and I both can  
23 understand it can actually have a positive influence on  
24 somebody. Yet when you're asked on this Question Number  
25 71, where you agree or disagree, you say, Prison makes

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1 it's not very likely that you will even be alive in  
2 forty years.

3 A. Myself, when I said that about the coming out  
4 more hardened and so forth on there -- and I believe I  
5 mentioned it -- I was talking about for a short term  
6 type punishment on there. You know, I'll say a couple  
7 of years. Could be longer, whatever type of deal they  
8 have.

9 Q. One of the things that he found is sometimes  
10 when we're confronted with an individual, we make a  
11 judgment about that person. I'm just talking about in  
12 our daily lives. And once we make that judgment about  
13 that person, how we think about that person in the  
14 future, we generally want to conform with our initial  
15 impression or our initial judgment of the person.

16 I'm going to try and give you an example.  
17 Child goes to school. And the teacher thinks, well,  
18 this child doesn't do very well on these tests, or he's  
19 not performing very well; and he's thought to be, if you  
20 will, dumb, stupid, whatever. And they put him down at  
21 the slower levels of the classes where things go slower.  
22 People begin, well, if the teacher thinks you're dumb, I  
23 guess you must be dumb. And kids begin to follow this.  
24 And the thing is, he's not really dumb. There are many  
25 number of reasons why a child, you know, might



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1 underperform in school. And I guess what I'm getting to  
2 is that as a juror in a case like this, you're called to  
3 make a real big decision; and that's whether or not  
4 somebody -- and in this case, Charles Mamou -- is guilty  
5 of society's worst crime, capital murder.

6 And it seems to me that when you make that  
7 judgment, you make a very, very conclusive judgment  
8 about that person. One, legally he's guilty of capital  
9 murder. And possibly along the way he makes some other  
10 decisions about it, as well. Not that you wouldn't, but  
11 I think it's very common. But when you get to the  
12 second phase of this trial, you've been told you've got  
13 these two other issues to answer.

14 You know from your conversation this  
15 morning with the Judge that all of these decisions are  
16 supposed to be independent of one another. In other  
17 words, you make one and you make the other. Then you  
18 make the third one. But going back to my example with  
19 the child, you may possibly have concluded that  
20 somebody's guilty of capital murder automatically.  
21 Well, if you're guilty of capital murder, you're going  
22 to be a future danger to society. How do you feel about  
23 that?

24 A. That's where the evidentiary part of it comes  
25 in on there, where you have -- you have to determine

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1 first the guilt or innocence on there, and then whether  
2 he would be a continuing threat at that point to society  
3 on there. I may not be explaining this good enough for  
4 you.

5 Q. No, you're doing a good job.

6 A. And I certainly am glad those are two separate  
7 questions on the deal on there. I didn't know those  
8 were before; but yeah, you just have to take everything  
9 into consideration on that on there, you know.

10 Q. And you see what happens here -- and I think  
11 you can understand -- I didn't ask you that question  
12 because, you know, if you just decide somebody's guilty  
13 of capital murder, there is always going to be a future  
14 danger. There is almost no sense to the question. It  
15 doesn't really call for that independent inquiry the  
16 Judge was talking to you about. And when you get to the  
17 second phase of the trial, as the Judge told you, all of  
18 these words, with the exception of proof beyond a  
19 reasonable doubt, were defined as you define them. They  
20 don't have a legal definition.

21 And the Judge talked to you about a  
22 probability, responsibility. And when -- you know, when  
23 we talked about this Special Issue Number One, we're  
24 talking about probability. And certainly you're talking  
25 about it in a real important context, because we're

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1 essentially talking about how somebody's life is going  
2 to be decided. And that thing called probability can  
3 mean anything it wants to you. You're going to define  
4 it for yourself.

5 You may decide, well, maybe more likely  
6 than not is enough. But if I'm going to be deciding  
7 whether or not somebody is getting the death penalty, I  
8 want to be real sure they're going to be engaging in  
9 that kind of conduct. And you ask yourself, what kind  
10 of conduct is that? Well, it's pretty extreme conduct.  
11 So if you look at the words "criminal acts of violence,"  
12 that would constitute a continuing threat to society,  
13 we're not talking about just any crime. I think we're  
14 talking about a very serious level of crime. Would you  
15 agree with me or disagree with me?

16 A. I'm sorry. Repeat that question one more time.

17 Q. Well, as I look at the last two sentences, or  
18 last two lines there, these criminal acts of violence  
19 must be so serious that they would constitute a  
20 continuing threat to society. And I guess what I'm  
21 saying or asking is, that's just not any crime. It's a  
22 higher level of crime when it involves violence. Would  
23 you agree with that?

24 A. Yeah, as to violence, yes, sir.

25 Q. And one of the things that -- and I think

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1 you've experienced -- sometimes you can be put in an  
2 institutional setting, such as the Army; and you'll live  
3 under certain rules. And the rules are a little bit  
4 more stringent, let's say, than the rules that you live  
5 by when you're not in the Army, such as you have to  
6 dress a certain way. You can violate those kinds of  
7 rules pretty easily. I'm not saying you might have, but  
8 it's certainly possible. But they really don't come to  
9 the level or rise to the level of acts of criminal  
10 violence that would constitute a continuing threat to  
11 society.

12 A. Yes, sir, I understand it.

13 Q. And when you get to Special Issue Number 2,  
14 you've gotten to a point where, quite truthfully -- and  
15 if you get that far, I'm going to assume for the  
16 purposes of our discussion you get that far -- that you  
17 essentially have a life or death decision to make.  
18 Because if this question is answered no, then the death  
19 penalty would be imposed. If it's answered yes, then  
20 the person may receive the life sentence we've talked  
21 about. And it asks for you to look through this thing  
22 called mitigating evidence, through maybe one of a  
23 couple of areas, the circumstances of the offense, the  
24 defendant's character and background, and the personal  
25 moral culpability of the defendant.

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1 And I'd like to talk to you basically  
2 about each one of those three, and the first part has to  
3 do with the circumstances of the offense. Now you know  
4 you've already been satisfied that -- or believe beyond  
5 a reasonable doubt that he intentionally took that  
6 person's life in a capital murder context. There is no  
7 self-defense, there is no accident, there is no  
8 insanity, nothing like that. But it's felt that  
9 sometimes from the facts of the case that there might be  
10 something there that stops or lessens of the person's  
11 deathworthiness.

12 You could all say if somebody goes into a  
13 room, and with the intention of robbing somebody and  
14 kills them, that may be -- and he does that, then  
15 certainly -- that is certainly a very reprehensible set  
16 of capital murder circumstances. Somebody goes into a  
17 room, does the robbery; and suddenly in the course of  
18 it, a fistfight breaks out and the death occurs. That's  
19 a little bit different than the first circumstance.

20 With regards to the person's moral -- the  
21 defendant's character and background, that allows you to  
22 go back and look at them to determine a little bit more  
23 about them, who they are, why they are where they are,  
24 so to speak. And when we get to thinking about those  
25 things, sometimes we talk about them as excuses.

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1 That's -- am I going to hear about the bad background,  
2 the poor childhood again? How do you feel about  
3 listening about somebody's background in deciding how  
4 you're going to answer the Special Issues in answering  
5 Question Two about the personal background of an  
6 individual.

7 So there is one reason I'm asking you  
8 about that; because in Question Number 68 you're asked  
9 about, do you believe that you could consider mitigating  
10 evidence in determining whether or not somebody deserved  
11 the death penalty? And you say, no. And this is  
12 exactly the point where mitigating evidence gets to be  
13 considered. Could you give --

14 A. I can explain to you why some of those answers  
15 are that way on there.

16 Q. Mind if I sit down?

17 A. I have no problems with that. I'm not a  
18 student of the law, okay. And I do pick up on things  
19 reasonably well. I think I do, anyway, quickly on  
20 there. And I think that now with issues that have been  
21 shown to me on this stuff, on this particular point of  
22 law, I'll call it on there that, yeah, that sometimes  
23 possibly things in the background could be in there  
24 where I, as a juror at that point in time, would have to  
25 weigh those things for my own decision-making process on

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1 there. Is that what you're looking for? If that's not  
2 something -- let me rephrase that on there. Is there  
3 another part to that question that I didn't answer for  
4 you on there?

5 Q. You've done great, and I really appreciate your  
6 talking with me this morning. Thank you.

7 THE COURT: Thank you, sir.

8 (Court admonishes prospective juror.)

9 ELYSE CONNER SONY,

10 having been first duly sworn, testified as follows:

11 VOIR DIRE EXAMINATION

12 BY THE COURT:

13 Q. I have a couple of questions for you before we  
14 start. I can't talk without her. Let's go back to what  
15 you mentioned earlier about the possibility of being  
16 called back. I looked at your questionnaire, and I  
17 didn't see any mention of that in the questionnaire.

18 A. Right.

19 Q. And you're going to be answering my question,  
20 because I was the one that asked it; but these guys have  
21 to hear your answer, too. So just speak to them, too;  
22 because it's going to be easier for me to hear. Talk to  
23 me.

24 A. Why I didn't answer on the questionnaire?

25 Q. Is the information you gave us this morning

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1 more recent than when you filled out the questionnaire?  
2 Did you get a call?

3 A. Well, at that -- at the time that I was called  
4 for jury duty, yes, I was off work. And I had been told  
5 that it was indefinite as to when I would be called  
6 back. You know, it may be Christmas. It may be after.  
7 And I wanted to answer as clearly as I could. If I  
8 wasn't called back to work, there would be no reason for  
9 me not to be able to serve on jury. That's the reason I  
10 answered it that way.

11 Q. Have you heard anything from anybody?

12 A. Nothing, unfortunately.

13 Q. I understand. I sympathize with you. This is  
14 my thoughts. That being the case, Miss Sony, if I'm  
15 hearing you correctly, you may or may not hear from them  
16 before this trial has concluded?

17 A. That is correct, sir.

18 Q. We may or may not hear from them before the  
19 29th of September, which is the next stage of this  
20 process?

21 A. That is correct, sir.

22 Q. So, my thought right now would be -- and you  
23 tell me if your thought is contrary to mine -- is let's  
24 just go ahead for right now, see where we are on the  
25 29th.

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1 A. I very much want to be a part of the process.  
2 I feel very strongly about it.

3 Q. Before we begin the process, do you have any  
4 questions at all for me?

5 A. No. You answered some questions that I had  
6 this morning.

7 Q. Thank you.

8 THE COURT: Mr. McClellan?

9 MR. MCCLELLAN: Thank you, Your Honor.

10 VOIR DIRE EXAMINATION

11 BY MR. MCCLELLAN:

12 Q. Miss Sony, just to that one area, obviously,  
13 let's say you're picked to be on the jury when we get to  
14 the 29th. That's the date we're going to bring  
15 everybody back, and we each have fifteen strikes. Let's  
16 say you are on that jury. You come back on the 4th of  
17 October. And on the 5th of October, you get a call  
18 saying, come back to work. But you're on a jury.

19 A. I have to stay on the jury.

20 Q. You can give us your full attention?

21 A. Yes, sir.

22 Q. So that would be the only thing we worry about,  
23 is that if someone got that call they'd say, well, let's  
24 hurry up and get this deal over with; because I've got  
25 to get to work. And we can't hurry it up,

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1 unfortunately. So that wouldn't be a problem?

2 A. No, sir.

3 Q. Let me go over some other things in your  
4 questionnaire. You've indicated you had at least more  
5 than one friend who has been murdered?

6 A. Yes, sir.

7 Q. You said a friend was killed in a drive-by on a  
8 bus in Dallas?

9 A. Yes, sir.

10 Q. How long ago was that?

11 A. It's been seven years.

12 Q. Was anybody prosecuted for that crime?

13 A. I don't know, sir.

14 Q. How close a friend was that?

15 A. It was a very close friend.

16 Q. Did you live in Dallas, or did they?

17 A. We were workers, and we talked on a daily  
18 basis.

19 Q. This is somebody that worked in Dallas?

20 A. Yes, sir.

21 Q. And you worked with her, and y'all talked on  
22 the phone?

23 A. Yes, sir. And there were several business  
24 meetings. And when he would come to Houston, we were  
25 just good friends.

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1 Q. Says, Three friends of mine, a mother and her  
2 two sons, were murdered by her estranged husband?

3 A. Yes, sir.

4 Q. When was that?

5 A. Four years ago.

6 Q. Was that here in Houston?

7 A. Yes, sir.

8 Q. Was someone prosecuted for that?

9 A. The man that did it killed himself after he  
10 killed the three.

11 Q. After he killed them, he committed suicide?

12 A. Yes, sir.

13 Q. The fact that you've had that many friends die  
14 as a result of gunfire, and knowing this case involves a  
15 murder, alleged to be a capital murder, does that affect  
16 your ability to be fair and impartial?

17 A. No, sir.

18 Q. That won't carry over into this case?

19 A. No, sir.

20 Q. You indicated your daughter was charged with  
21 public intoxication, and the cops were a bunch of jerks,  
22 and this, that, the other, and all that?

23 A. That's correct, sir.

24 Q. I have no doubt about that. That didn't happen  
25 to be Precinct 4, did it?

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1 A. No, no, it wasn't.

2 Q. It could have been?

3 A. Actually, it could have been.

4 Q. Police officers are going to testify in a case  
5 like this. Listen to what the police officers testify  
6 to. And if you think that police officer is a jerk,  
7 you're able to follow that law? If you think they're  
8 okay and they're telling the truth, you can follow that,  
9 too?

10 A. I don't believe all police officers are jerks.  
11 I believe, as in every human race, there are bad.

12 Q. Always bad in everything?

13 A. That's right.

14 Q. The -- in your questionnaire, from reading your  
15 questionnaire, it appears that you believe the death  
16 penalty is a proper type punishment for certain types of  
17 crime; is that correct? Is that right?

18 A. Yes, sir.

19 Q. What kinds of cases come to your mind when you  
20 think of cases where you think the death penalty ought  
21 to be available as a form of punishment?

22 A. If in the act of committing a crime, or if the  
23 crime in and of itself is the murder -- I mean, if a  
24 person sets out to kill someone because they didn't like  
25 the way something that person did that they took

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1 someone's life, I just think that that's wrong.

2 Q. And --

3 A. Taking someone's life just because you're mad  
4 at them or because they have something you want is, you  
5 know.

6 Q. Okay. Now the Judge talked to you about the  
7 difference between murder and capital murder?

8 A. Yes, sir.

9 Q. And murder could be killing someone because you  
10 don't like them or for some reason like that; but the  
11 law says that's not capital murder, death penalty  
12 doesn't apply.

13 A. Yes, sir.

14 Q. It only applies when it's murder plus some  
15 other felony offense?

16 A. Yes, sir.

17 Q. What we have alleged here is murder during a  
18 kidnapping, and also, murder during a murder, killing  
19 two people or more during one criminal episode. If we  
20 prove it's one of those, then the defendant would be  
21 found guilty of capital murder. So we've alleged two  
22 ways of committing capital murder in our indictment,  
23 murder during the kidnapping, and also, the law -- the  
24 law says capital murder is murder during a robbery or  
25 burglary, during a sexual assault or kidnapping, those

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1 kinds of felonies, killing two or more people during one  
2 criminal episode, police officer in the line of duty,  
3 taking that person's life, or a child under -- killing a  
4 child under a certain age. We've alleged two of those  
5 manner and means of committing capital murder in our  
6 indictment.

7 Some of the jury can believe one -- six  
8 can believe one and six believe the other, and they can  
9 all believe it's one or the other two capital murders,  
10 or they could all believe it's one and not the other.  
11 Any scenario, they're still guilty of capital murder.  
12 Okay.

13 Just because it's capital murder, though,  
14 as the Judge has told you, it doesn't mean that tells  
15 you what the punishment is going to be; because you have  
16 to look at all the facts and circumstances. Even  
17 killing two or more people during one criminal episode,  
18 that's still -- you don't know what the facts are to  
19 that.

20 I think we often run into the problems in  
21 the fact that it's common that a person doesn't deal  
22 with this on an everyday basis. They hear the word  
23 murder, they think of something very horrible. And I'm  
24 not saying murder is not very horrible. Murder is the  
25 intentional taking of another person's life without any

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1 legal justification; but as the Judge indicated to you,  
2 it would be all the way from a mercy killing one end to  
3 a drive-by shooting of a kid on a bicycle on the other  
4 end. Totally different type circumstances. And that's  
5 why we have the questions up here, and that's why each  
6 question has to be answered independently; because I  
7 suggest -- and you tell me if you think I'm wrong --  
8 that you can't tell me what you're going to do in a  
9 capital murder case. Even if I told you a person was  
10 guilty, you still couldn't tell me what you're going to  
11 do unless you knew what the facts and circumstances  
12 were.

13 A. That's correct.

14 Q. Now some people, though, do come in and say,  
15 hey, if I find someone guilty of capital murder, forget  
16 it. I'm going to give that guy the death penalty.  
17 They've already written everything off, and they've  
18 decided what the facts are without ever hearing them. I  
19 want to make sure you're not that type person.

20 A. Yes, sir.

21 Q. Now some people tell us, come in and say, I  
22 believe in the death penalty. I believe it's a proper  
23 type punishment for certain types of crimes. But some  
24 of those people then go further and tell us, I don't  
25 believe, though, that I, myself, could ever participate

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1 in a process where I would be called upon to make  
2 decisions that I know would result in this Judge  
3 ordering the execution of the defendant sitting over  
4 here on trial. Do you have any doubts about your  
5 ability to participate in that type of process and make  
6 those type of decisions if that's what the law and the  
7 evidence called for?

8 A. No, sir.

9 Q. You understand -- maybe I'm basically banking  
10 on the fact that you listened to the Judge's voir dres  
11 and understand how the process is set up; because, you  
12 know, we all come in with personal opinions. We all  
13 come in with personal thoughts, and a lot of these --  
14 like a person asked me, what do I think about capital  
15 murder? I'm going to be thinking of some scenario in  
16 my mind. I may not play it out piece by piece, but I'm  
17 going to be thinking of something pretty bad. I  
18 sometimes don't often stop to think that there may be  
19 other -- where a person still gives you capital murder,  
20 but there may be other circumstances that might affect  
21 what my decision might be.

22 Somebody may say, what do you think the  
23 punishment ought to be for aggravated sexual assault?  
24 Aggravated sexual assault is going to be pretty high;  
25 but, of course, I don't know what the facts and



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1 circumstances are of this case. There may be all kinds  
2 of things that come out, something like, say,  
3 endangering a child. All these things sound bad, but  
4 you have to wait till you hear the facts and  
5 circumstances to keep your mind open to everything  
6 that's available there to make that final decision. Are  
7 you the type of person that can do that?

8 A. Yes, sir.

9 Q. If I were an accused charged with capital  
10 murder and you're a prospective juror, would I want you  
11 as a juror?

12 A. I believe so.

13 Q. If I am the family member of a victim who is  
14 the victim in a capital murder and I'm coming to watch  
15 the trial, do I want you sitting in judgment on the  
16 person that allegedly took my child's life?

17 A. I believe so.

18 Q. And why do you say that on both cases?

19 A. Because I feel like I have the ability to  
20 evaluate honestly and follow what my heart tells me. I  
21 mean, after what I hear. There has been many times,  
22 after raising two children, that I go into a situation  
23 thinking, I know exactly how I'm going to handle this  
24 situation. But due to the circumstances involved, my  
25 decision -- I mean, how I handle it is completely

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1 you put in your questionnaire; and I'll ask them from a  
2 slightly different perspective, obviously, than  
3 Mr. McClellan. I guess the main concern that I have  
4 about anyone that sits in that chair that your attention  
5 right now is that you're bombarded with comments to the  
6 effect of, The law says this; The law says that; The law  
7 would require you to do this or to do that.

8 Ultimately, what you do in a case is your  
9 sole decision as a juror. We want to make sure that at  
10 this time, which is the only time that we get to speak  
11 personally with you, that you are given an opportunity  
12 to fully express anything that's on your mind that could  
13 play a part in this case, either from the State's  
14 perspective or the defense perspective. So if I ask you  
15 a question and you think that it's either too personal  
16 or that it's not something you care to answer, please  
17 tell me. Okay?

18 A. Okay.

19 Q. My intent is not to pry. It's to try and  
20 really figure out in twenty minutes, who is Miss Sony?  
21 Is she the type of person that we are comfortable with  
22 as far as your serving on this case? Okay. The law  
23 doesn't require you to artificially dispose of the  
24 feelings you have when you come into court. I think  
25 that would be improper, because we all are products of

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1 different than what I thought going into it because of  
2 the thought processes.

3 Q. Right. And that brings up another issue that  
4 strikes close to my heart. In raising kids, do you  
5 often find, also, that your kids tell you one thing; and  
6 then when you kind of get them pinned down on something  
7 else, they finally come clean?

8 A. Many times.

9 Q. I assume -- or you tell me, do you have any  
10 preconceived idea of what the punishment ought to be for  
11 this case?

12 A. I don't know anything about this case, sir.

13 Q. And can you follow the law given to you by the  
14 Court and make your decision based on that law and the  
15 evidence you hear in the courtroom and nothing else?

16 A. Yes, sir.

17 Q. All right. Thank you.

18 THE PROSECUTOR: I'll pass the witness.

19 THE COURT: Thank you. Mr. Hill.

20 MR. HILL: Thank you, Judge.

21 VOIR DIRE EXAMINATION

22 BY MR. HILL:

23 Q. Hi, Miss Sony. My name is Wayne Hill. Kurt  
24 Wentz and I both represent Mr. Mamou. I'll take a few  
25 minutes to visit with you, if I could, about the things

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1 your environment, upbringing, and day-to-day lives. And  
2 so, it's important for us to know what your feelings are  
3 and let the chips fall where they may.

4 Okay. I'll ask you one thing. As a  
5 defense lawyer, I'm reading this one answer you gave,  
6 and I'll see if I can't get you to change the answer a  
7 little bit. Listen to the question. Says, What does --  
8 well, it talks about, Do you believe -- or what is the  
9 most important purpose for punishment in a criminal  
10 case? And you said retribution and deterrence. And the  
11 follow-up question was, What is the best way to achieve  
12 that purpose? Your answer was, Good prosecutors, and  
13 good defender, and good jurors who approach their  
14 responsibility with conviction. Would you mind changing  
15 the word conviction to commitment for me? Because I  
16 think, as a defense lawyer, I don't need to be  
17 approaching it from a conviction standpoint. Would you  
18 agree to change your word from conviction to commitment?

19 A. Okay.

20 Q. Okay.

21 The State has no objection.

22 THE COURT: Anything else?

23 Q. (BY MR. HILL) Okay. Mr. McClellan was talking  
24 to you, and he said that murder is the intentional  
25 taking of another person's life without legal

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1 justification. In your own words, can you tell me what  
2 legal justification means to you?

3 A. In the case of someone coming at you,  
4 threatening to take your life or harming you or your  
5 family.

6 Q. Okay.

7 A. And in the course of that event, the only  
8 action or the only outcome is that you have taken their  
9 life. I think that's justified.

10 Q. Okay. And that's a classic case of  
11 self-defense. The reason I ask that is because many  
12 times when we're talking to prospective jurors, they get  
13 very confused about where that fits into a trial. You  
14 understand that the State is alleging clearly that two  
15 people were killed.

16 The question of whether or not those  
17 killings took place in a way that makes a person  
18 responsible in the criminal law has to do with  
19 potentially those very issues. You, as a juror, would  
20 sit and listen to the facts. And you may conclude that  
21 an individual caused somebody's death. The decision  
22 that you have to make is, what were the circumstances?  
23 Are the circumstances such that that person should be  
24 found guilty or found not guilty? Okay. And that's all  
25 done at that first stage of the trial that the Judge is

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1 describing. Do you understand that if you were to  
2 believe, along with eleven others, that the State had  
3 failed to prove their case beyond a reasonable doubt and  
4 that maybe the jury found there was some type of  
5 self-defense that you've just described, you understand  
6 we would never proceed to a second stage of a trial?

7 A. Yes, sir, I do.

8 Q. There is a whole lot of people that are just  
9 so -- because nobody deals with this stuff, and  
10 especially when you're talking about a capital murder  
11 prosecution. The rules are totally different. It  
12 doesn't proceed exactly the same way as a normal trial  
13 does. So it's important for me to make sure that jurors  
14 even understand Number one, the basic process and the  
15 words that we use so that we're not saying one thing and  
16 the juror is thinking something else and we're kind  
17 of -- we're not on the same wavelength. Okay. What's  
18 it feel like to sit there and be viewed as a prospective  
19 juror in the most serious type of crime in the State of  
20 Texas?

21 A. It's sobering. It's very sobering to me;  
22 because you're talking about not only was someone's life  
23 taken, but you're talking about the possibility of  
24 taking someone else's life. So it's a very sobering  
25 feeling. I realized that the other day, last Friday

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1 when we had our first group in here, that it was -- I  
2 went home realizing that this is very serious, very  
3 sobering, and it's something to deliberate very  
4 carefully.

5 Q. It's really real now?

6 A. Very real to me.

7 Q. Do you think that your views or the way you  
8 would express your feelings contrasting how you might  
9 visit with maybe some neighbors or something over coffee  
10 versus here we are in the courtroom today? Do you think  
11 your feelings might differ a little bit sitting around,  
12 just having a general conversation about a topic like  
13 this versus how far you're viewing the situation right  
14 now?

15 A. Most definitely, most definitely.

16 Q. I take it then that you take this as a very  
17 serious -- something that will require a great deal of  
18 thought. And whatever decision you ultimately make on  
19 any issues that are presented to you, you would feel  
20 comfortable with your ability to evaluate everything  
21 before making a decision?

22 A. I would have to be very sure in my own heart as  
23 to what decision, because it is -- there is two sides,  
24 and both sides, or one side, has already been hurt and  
25 the other side stands to be hurt. So it's something I

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1 would think very carefully over.

2 Q. You know, oftentimes when we talk about -- or  
3 if the question were asked from the State's perspective,  
4 what information would you think would be important  
5 before deciding whether a person should be sentenced to  
6 life or death? We hear things like, well, we want to  
7 know about the person's background. We want to know if  
8 they have a prior conviction. We want to know if  
9 they've been in trouble before. I will look very  
10 closely at the way the crime was committed to see  
11 whether it was one of those cases where it was  
12 premeditated, so thought out, so cunning, versus maybe  
13 the offense happened very quickly, and certainly the  
14 person takes the person's life; but the circumstance  
15 helped to explain why. Okay. That would be from the  
16 State's perspective perhaps. What do you think would be  
17 important from the defense perspective to present to you  
18 as to why a person under those circumstances shouldn't  
19 receive a life sentence rather than a death penalty,  
20 knowing that you had just found beyond a reasonable  
21 doubt that the person did take one of two people's lives  
22 intentionally, without legal justification?

23 A. It's very difficult to answer the question  
24 or --

25 Q. I know.

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1 A. I would have to just hear what's presented, I  
2 mean, and base it on what it is then.

3 Q. Let me put it -- let me make it a little bit  
4 more personal to you and see whether or not you kind of  
5 come up with some reasons. Let's assume for a moment  
6 you're my client. You've just been convicted of capital  
7 murder. Okay. And I turn to you and say, Okay, Miss  
8 Sony, the jury's sitting there trying to determine  
9 whether or not you receive life in prison or the death  
10 penalty. What do you want me to tell them about you?  
11 What would be important, do you think, for the jury to  
12 know about you before making that type of decision?

13 A. If it were me, on a more personal -- I  
14 appreciate the way you did that -- there were mitigating  
15 circumstances. There was some -- there was other things  
16 involved, and the kind of person I am, and the life I've  
17 led prior, leading up to this in no way indicates that  
18 I'm the kind of person that would -- that does this or  
19 would do this again, that there were mitigating  
20 circumstances that caused the whole series of events to  
21 occur.

22 Q. Okay. You see what I try to avoid when I'm  
23 looking at a prospective juror as the person that I  
24 refer to as a knee-jerk reaction, or when I throw out a  
25 buzz phrase like everybody that commits a crime, or the

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1 same crime, should be treated the same. That sounds  
2 like it's inherently fair. It sounds like, well, yes,  
3 if A and B both commit the exact same crime, they should  
4 both be punished the same. Well, it completely ignores  
5 who A and B are.

6 In your scenario, where I'm representing  
7 you, you would want the jury to know as much as possible  
8 about you and about the circumstances of the offense you  
9 had been found guilty.

10 A. Right.

11 Q. Okay. See, you get to wear hats when you're  
12 sitting in that chair before you serve on the jury. So  
13 now we're going to make you one of many house  
14 representatives here in Texas. You've been voted in as  
15 the representative from your particular area, and there  
16 is a movement afoot to change the process as it relates  
17 to criminal prosecution of capital murder cases.

18 You know, right now a jury is given the  
19 option by answering these two questions of, will a  
20 person receive life in prison or the death penalty?  
21 Well, somebody in the Legislature has introduced two  
22 bills for consideration in this session. One bill says  
23 for every person convicted of capital murder, the  
24 automatic sentence shall be death. The other bill says  
25 for every defendant convicted of capital murder, the

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1 automatic sentence shall be life in prison. Those are  
2 the only two bills you get to vote on. There is nothing  
3 in between. There are no other options. Which of those  
4 two bills do you feel you would be more comfortable with  
5 voting for, or do you have something else you'd rather  
6 say about the prospect of only having those two options?

7 A. Well, I would prefer to withdraw my vote and  
8 not make a vote at all. But if those were the only two  
9 things I had to vote on and I had to vote on one or the  
10 other, I would vote on the second one; because the first  
11 one would mean that it doesn't matter what the  
12 circumstances were involved that caused this thing to  
13 happen.

14 Q. Okay.

15 A. No matter what they are. At least with the  
16 second one I feel like in those circumstances where  
17 there were mitigating circumstances that caused this  
18 crime to be committed, those -- I guess to -- that's  
19 probably how I would vote if I had to vote, but I would  
20 prefer to withdraw my vote.

21 Q. Okay. Do I take it then you're more  
22 comfortable with what we have right now?

23 A. Yeah. I didn't know about these until --

24 Q. Hardly anybody does. You know, unless you're  
25 probably maybe a teacher of history or civics or

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1 something, it's very unlikely that people are going to  
2 understand or have ever been exposed to the actual  
3 process of how we walk through a case like this and what  
4 type of decisions the jury will make. So, you're  
5 comfortable with the process as it is?

6 A. Uh-huh.

7 Q. Any questions that you have of me or any  
8 comments that you'd like to make to me about, gee,  
9 here's something about me you haven't even asked,  
10 Mr. Hill, that you need to know. The red flag should go  
11 up that as a defense attorney representing somebody  
12 that's charged with capital murder, you should be smart  
13 enough to ask this question; because otherwise, you're  
14 not going to hear the answer. Is there anything like  
15 that?

16 A. No. I think the only thing you missed was our  
17 blood type. I think you pretty much covered everything.

18 Q. Well, you know, Mr. McClellan wanted that  
19 question included, and I said that I thought it was a  
20 personal invasion. Okay. Thank you.

21 THE COURT: Thank you, sir.

22 (Court admonishes prospective juror.)  
23  
24  
25

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1 STACIE COKINOS,  
2 having been first duly sworn, testified as follows:

3 VOIR DIRE EXAMINATION

4 BY THE COURT:

5 Q. I asked you the other day, and you gave me the  
6 answer, which is Cokinos. I'm going to take a run at  
7 it. Cokinos?

8 A. Cokinos.

9 Q. Miss Cokinos, do you have any questions at all  
10 for me about anything we talked about this morning?

11 A. Not this morning, no.

12 Q. In that event, I will turn you over to  
13 Mr. McClellan.

14 MR. MCCLELLAN: Did you call on me again?  
15 You're always calling on me first.

16 THE COURT: He's been talking in class.

17 VOIR DIRE EXAMINATION

18 BY MR. MCCLELLAN:

19 Q. My name is Lyn McClellan, ma'am, and this is  
20 Claire Connors. We represent the State of Texas in this  
21 case. Why don't you just sit back and relax. We're  
22 going to ask you to share with us, if you will, some of  
23 your opinions and beliefs about certain aspects of the  
24 law, kind of go over your questionnaire, maybe some  
25 things, if I can find some things, that raises questions

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1 in my mind or I want to know more about.

2 You know, you filled the questionnaire  
3 out. And we grade these as -- we don't grade them, but  
4 we take this last series of questions about these 1  
5 through 5, two sets of 1 through 5; and you come out a  
6 three three. And a three three means, I'd consider the  
7 death penalty on some cases. I could do it in the  
8 proper case and that's what the law and evidence called  
9 for. It's right down the middle. That's really kind of  
10 where we end up getting all of our jurors; because if  
11 someone is too close to the one, that means they can  
12 never do it. If they're too close to the fives, they  
13 would do it every time. So those that fall in the three  
14 three category, it's like not talking during a regular  
15 voir dire. You're the one that gets picked, because  
16 both sides are more comfortable with those types of  
17 people.

18 Let me just ask you -- I know you've dealt  
19 with the juvenile probation department in a volunteer  
20 capacity, I guess. What do you do in this intense  
21 screening process?

22 A. That was a -- I guess it was through the Junior  
23 League of Houston. It was volunteer service, and it  
24 was -- I don't remember what years it was, but it's been  
25 a few years ago since I've done it. But one night a

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1 week I would go in and receive cases, up to three cases.  
2 And the family and the child would have been scheduled  
3 that evening to meet with me, and we would look at the  
4 case and determine -- I'd meet with the child  
5 one-on-one; see, it may have been shoplifting -- they  
6 were misdemeanor crimes and make a determination then on  
7 what happens next. I mean, in a lot of cases it was a  
8 very first offense and the other circumstances. I  
9 didn't have any heavy crimes. That's why they let  
10 volunteers handle them.

11 Q. And then you decide whether or not it's going  
12 to be referred or not or whether it's going to be  
13 handled like -- these people, I assume, are not in  
14 custody, the ones that you talk to?

15 A. No, they're not.

16 Q. Their parents bring them down, and everybody  
17 talks with them. And they also talk with the parents?

18 A. Right, right.

19 Q. Can you tell me in your own words what is your  
20 opinion about the death penalty?

21 A. It's very serious. I mean, I think that in  
22 some cases it's warranted; but to make that decision or  
23 decisions that would lead up to that sentence is a --  
24 would be a tremendous challenge. I mean, I don't think  
25 it's something that should ever be taken lightly.

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1 Q. No. And I think everyone agrees with you  
2 that's going to be on jury, but it would be the most  
3 serious decision you'll probably make in your life.

4 A. Absolutely, uh-huh.

5 Q. What kind of cases come to your mind when you  
6 think of cases of crimes where you think the death  
7 penalty ought to be available?

8 A. I guess the word "heinous" comes to mind. It's  
9 something that just is almost maybe beyond comprehension  
10 or something that is just so severe, your history may  
11 well come into that if there is -- maybe the individual  
12 case may not be heinous, to use my word. But if there  
13 are previous circumstances that led up to this that you  
14 can see a real pattern there. But, I mean, I feel like  
15 for me to be a part of that decision-making process, I'd  
16 have to really be very comfortable with knowing a lot of  
17 information. It's not something I could take on a  
18 little bit of information or any information from  
19 limited sources.

20 Q. Okay. Now you understand that in the criminal  
21 process, the only side that is required to present  
22 evidence is our side. Defense has no burden of proof.  
23 They're not required to present any evidence to  
24 anything. That doesn't mean they won't. I'm just  
25 saying there is no requirement there.



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1 And a lot of people like to say -- and  
2 it's common sense that you want to hear both sides  
3 before you make up your mind. In a criminal case, you  
4 don't always get to hear both sides; because the other  
5 side has no obligation. Any problem with that aspect?  
6 Do you think the circumstances of a crime -- by that I  
7 mean, you know, affect whether you think a death penalty  
8 is appropriate? By that, I mean this: You would hear  
9 evidence about what happened before, during, and after  
10 the commission of the crime.

11 What happened before the crime? One  
12 example could be this was a spur of the moment act that  
13 happened as a result of circumstances. Another could be  
14 preplanned, premeditated, thought-out. What happens  
15 during the course of a crime, you would be able to hear  
16 evidence about how the crime was committed, whether  
17 shooting, stabbing, choking, you know, how the situation  
18 occurred. What happened after the crime would be  
19 whether a person, you know, was remorseful about what  
20 they had done or they were braggadocious about what had  
21 happened during the course of a crime. You think all  
22 that information is helpful in determining not only  
23 guilt/innocence of a defendant, but what type of  
24 punishment the person ought to receive?

25 A. Absolutely, very necessary.

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1 Q. In the questionnaire you said -- I want to go  
2 over that just for a moment. There were some on Page  
3 14, agree/disagree statements.

4 A. Uh-huh.

5 Q. And you're asked to check if you're more likely  
6 to agree or disagree. Number 4 said, Any person, man or  
7 woman, young or old, who's guilty of capital murder  
8 should pay with their own life. And you checked that  
9 you more likely agreed with that. Can you tell me what  
10 your thoughts were about that?

11 A. Would you read that one again for me?

12 Q. Any person, man or woman, young or old, who's  
13 guilty of capital murder should pay with their own life.

14 A. Well, I interpreted the capital murder as being  
15 a very serious offense, and today's description helped  
16 me to understand the capital part of that better. But I  
17 guess maybe a way to describe it is the responsibility.  
18 Because, I mean, I'm a very responsible person; and I  
19 expect others to be responsible, as well, until they  
20 prove themselves.

21 Q. And I think that question is open to many  
22 interpretations. One interpretation a person could give  
23 is that when you say any person, man or woman, young or  
24 old -- well, everybody's either a man or woman, young or  
25 old -- is guilty of capital murder should pay with their

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1 own life. That's like saying everybody that's guilty of  
2 capital murder should get the death penalty.

3 Obviously, now, having heard the Judge's  
4 voir dire, that's not the way our system was set up.

5 A. Right.

6 Q. And do you have any problem with the way our  
7 system was set up?

8 A. No. Actually, I think it's a good, a strong  
9 system. It's fair.

10 Q. Some people would come in and say -- and it  
11 doesn't appear you would be that type person, but tell  
12 me if I'm wrong -- that if I find someone guilty of  
13 capital murder, school is out. That person is going to  
14 get the death penalty. But there is a whole different  
15 part of the case that needs to be heard. On the guilt/  
16 innocence, the focus is on the crime itself; because  
17 we're trying to determine beyond a reasonable doubt  
18 whether or not the defendant committed a crime, as  
19 alleged in the indictment.

20 Punishment stage of the trial you may hear  
21 additional evidence, because that evidence that you hear  
22 at punishment was not relevant to whether or not a crime  
23 was committed. You may hear evidence about a  
24 defendant's character, their background, their criminal  
25 history or lack thereof, their mental abilities or

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1 disabilities, all kinds of information about the  
2 individuals, themselves. Because at that stage, your  
3 determination is what punishment this person should  
4 receive for the crime you have found him guilty of. So,  
5 you get additional evidence.

6 And then in answering these questions, you  
7 get to look at both bodies of evidence, the crime itself  
8 and also the individual's character, background, all  
9 that information. You use all that information in  
10 determining, one, whether or not the person, to a  
11 probability, would be a continuing threat to commit  
12 future acts of violence; and two, whether or not there  
13 is sufficient reason or reasons, what they call  
14 mitigating circumstances, why someone should receive  
15 life as opposed to death?

16 In looking at these mitigating  
17 circumstances, you're asked to basically go back and  
18 look at all the evidence in the trial, weigh it in your  
19 mind, and determine is this mitigating or not? And if  
20 it is, what effect it should be given. What do you  
21 think it should be given?

22 During the course of a trial you may hear  
23 the defendant was high on drugs or alcohol when he  
24 committed the crime. One juror may say, I think that  
25 mitigates towards a life sentence; because if you're

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1 high on drugs or alcohol, you're out of your right mind.  
2 And then Juror Number 2 may say, I don't agree with  
3 that. I know people that are on drugs or alcohol, and  
4 they don't commit capital murder. So, I don't see the  
5 connection on that. So two people could look at the  
6 very same evidence but come up with different opinions.

7 That's okay; because what the last  
8 question asks you to do, as an individual juror, is for  
9 you to examine the evidence, weigh it in your mind, and  
10 determine what effect it was given. Same thing with the  
11 age of a person. Somebody may think that's mitigating  
12 because they're a young age. Somebody else may say, I  
13 don't think it is. Somebody may say mental abilities or  
14 disabilities is mitigating. Somebody else may say, I  
15 don't think that is mitigating at all. I know other  
16 people that are slow learners or whatever. They don't  
17 go out and commit capital murder. I don't see the  
18 connection. Is there anything in your mind that you  
19 thought about that comes to your mind when thinking  
20 about mitigating circumstances, thinking about reasons  
21 why someone ought to receive a break, if you will, a  
22 lesser punishment of life as opposed to death. Anything  
23 that automatically comes to your mind that says, well,  
24 if I hear evidence about this, then that would always,  
25 in my mind, mean that that would indicate that life is

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1 more appropriate than death?

2 A. I don't think it would be any specific. I  
3 think anything could be a possibility when it's looked  
4 at in the context of that person's life, because if I  
5 would have had the same experiences -- you have to look  
6 at all -- the whole life.

7 Q. Right. So drugs are a problem in that a lot of  
8 people are affected by that. Do you think someone who  
9 is high on drugs or alcohol when they commit a crime  
10 ought to still be held responsible for their conduct in  
11 the commission of that crime?

12 A. Absolutely.

13 Q. And that's what the law says. The law says  
14 that voluntary intoxication -- I'm still responsible for  
15 my conduct.

16 A. Uh-huh.

17 Q. It doesn't -- it's not a defense. Have you  
18 ever known someone that drugs adversely affected their  
19 life or changed their life dramatically?

20 A. Not someone personally. I've seen this through  
21 extended peer groups, people who have made poor  
22 judgment; but there has been nobody close to me.

23 Q. Okay. There is a question in here about,  
24 Anyone can overcome a neglectful or abusive childhood.  
25 And you said you strongly disagreed with that. Can you

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1 tell me what your thoughts are in regards to that?

2 A. I think the scars are there. It's just that  
3 some things are just -- you can adapt to it, but I don't  
4 know that it would ever completely be eradicated from  
5 the person's life. And again, I mean every case would  
6 be different. And depending on the severity, but I  
7 don't think you can say blanketly that anyone can  
8 overcome it.

9 Q. Thank you very much, ma'am. I appreciate your  
10 time, and I'm going to pass you to the other side.

11 THE COURT: Mr. Hill.

12 VOIR DIRE EXAMINATION

13 BY MR. HILL:

14 Q. Hi, Miss Cokinos. How are you?

15 A. Fine.

16 Q. Is your mom still alive?

17 A. Yes.

18 Q. What's her name, first name?

19 A. Bonnie.

20 Q. Are you related at all to Ellen?

21 A. Uh-huh. She married my cousin.

22 Q. Is that how you got involved in juvenile  
23 probation?

24 A. Oh, no, completely separate. She hadn't  
25 married my cousin yet when I did that work. It just

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1 happens that there is an overlap in our interest.

2 Q. Have you ever been over to the Children's  
3 Assessment Center?

4 A. Yes, I have. I toured this year.

5 Q. Pretty spectacular place?

6 A. Yeah, it's fabulous.

7 Q. Here I am. I'm one of the defense lawyers in  
8 the case. And I'm sitting here, going to visit with you  
9 for fifteen or twenty minutes to try and evaluate, try  
10 and get a feel for whether or not you're one of those  
11 people we want, one of those people we want to have  
12 sitting in the chairs, deciding the fate of this man  
13 sitting here.

14 You've given some answers to  
15 Mr. McClellan's questions, and I'd like to maybe take a  
16 little different perspective. Question No. 13 is one  
17 that both sides like to focus on a little bit about the  
18 issue of abuse of childhood or a bad childhood, and can  
19 people overcome it? And your last response talked about  
20 generally disagreeing, as a blanket statement, you don't  
21 think that's valid. I'm going to make a kind of  
22 strange statement. I want to get the reaction to it.  
23 All right?

24 A. Okay.

25 Q. Here down at the courthouse, you read in the

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1 newspaper people talking about a capital murder case  
2 being tried. And oftentimes the jury is presented with  
3 some evidence from the defendant about his childhood,  
4 his upbringing, either. And to capsulize it people  
5 might say something like, well, Johnny had a bad  
6 childhood, and that's why he committed this murder. I  
7 want to know your response to that. Does that sound  
8 like there might be some validity to that statement; or  
9 on the other hand, is that a ridiculous statement?

10 A. No. I certainly think it could play a role in  
11 leading to the offense.

12 Q. All right. Go ahead.

13 A. I wouldn't -- I mean, you can't take that as a  
14 blanket, oh, well, then that's it, case closed. That's  
15 all it was, but it certainly would be a factor that  
16 might lead to that.

17 Q. Okay. You don't think that every crime that's  
18 committed is committed in a vacuum. There are  
19 circumstances that help you to understand why or, you  
20 know, under what circumstances the events took place?

21 A. Uh-huh.

22 Q. Would you want to know that? Would you want  
23 to have as much information as possible --

24 A. Absolutely.

25 Q. -- before you make any decision?

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1 A. Absolutely.

2 Q. Let me ask you whether -- do you think there is  
3 some crime that is culturally based. By that I mean,  
4 let's take for example the drug culture. There is some  
5 questions in this questionnaire about, if a person was  
6 shown to be using drugs or selling drugs, would that  
7 mean they lose the right to defenses available to other  
8 people? Do you think there is a certain set of rules  
9 for people that are kind of in a drug culture versus  
10 people that are in the normal society that aren't  
11 violating those rules?

12 A. No. I think it's the same set of standards.  
13 Those people in that culture, they had a choice --

14 Q. Right.

15 A. -- whether to be a part of that culture or  
16 not --

17 Q. I agree.

18 A. -- and the consequences of that choice.

19 Q. But do you think their lifestyle and their  
20 culture is the same as the one you live in?

21 A. No.

22 Q. Would you even begin to know what some of the  
23 rules are, some of the mores of a drug culture?

24 A. Huh-uh.

25 Q. Other than being exposed to it peripherally,

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1 would you be open to evidence being presented to you  
2 that might delve into those type of subcultures?

3 A. I think it was -- it would add to the  
4 understanding, yeah.

5 Q. Do you believe if a person was taken out of a  
6 culture like that and placed in prison, that their  
7 ability to operate has changed? In other words, their  
8 abilities to have that drug culture has changed?

9 A. Based on what I heard about the prison system,  
10 I would answer no, that it might be just as accessible.  
11 It's a different building that the culture still exists.

12 Q. What do you base that on? Where have you --

13 A. Just from news and prime time TV, to be honest,  
14 but it's an opinion based on that.

15 Q. Have you seen any -- did you ever see the  
16 presentation that Ted Koppel did on the Texas prison  
17 system?

18 A. Huh-uh, I don't think so.

19 Q. Talking about their administrative segregation  
20 units?

21 A. I don't think so.

22 Q. You ever heard that some prisoners are housed  
23 individually in cells for twenty-three hours a day.  
24 They're allowed to walk outside by themselves with a  
25 guard for one hour a day.

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1 A. Not specifically, no.

2 Q. What do you do at the Junior League?

3 A. It's a volunteer capacity. And I've actually  
4 just gone on a retired status, which means I'm no longer  
5 active. And the active membership just implies a  
6 volunteer commitment every year. And my time at Casa  
7 Esperanza is part of fulfilling that commitment, and I  
8 just liked the agency so much that I'm hanging around.

9 Q. That's pretty much what you did when you were  
10 active?

11 A. Yes, it's the same, yeah.

12 Q. All right. I'm going to make you a legislator  
13 for a moment. You're representing your district in the  
14 Texas Legislature. Somebody has introduced two bills  
15 for consideration; and they both have to do with the  
16 death penalty, or capital murder, I should say.

17 A. Okay.

18 Q. One bill says that for all people convicted of  
19 capital murder, the automatic punishment shall be death.  
20 The other bill says for all people convicted of capital  
21 murder, the automatic punishment shall be life in  
22 prison. If you are only given one vote and you have to  
23 choose between those two, do you feel like you would  
24 choose one over the other, or would you have a different  
25 explanation that you'd like to offer up?

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1 A. I would choose the second one. I'd choose  
2 life. If I had to make a choice between the two, I  
3 would choose life.

4 Q. Why would that be?

5 A. Because to choose the death option then rules  
6 out any of the mitigating information that came in.  
7 Just said it basically just takes guilt or innocence,  
8 guilty. And then there is -- it's too strong.

9 Q. Okay. Can I interpret and can I rely upon my  
10 impression that you are then comfortable with the  
11 process that is given to you, as a juror, as it exists  
12 today?

13 A. Absolutely.

14 Q. Can I also rely upon my, at least perception,  
15 that you're now an individual, that if you found an  
16 individual guilty of capital murder beyond a reasonable  
17 doubt that you would not approach Question Number One  
18 with the feeling of, well, my God, if we've just found  
19 this person guilty of capital murder, clearly there's  
20 got to be some probability that he would be a continuing  
21 threat to society.

22 A. No.

23 Q. Now the question, I think, becomes a little bit  
24 progressively difficult; because now if you answer  
25 Question Number One at the punishment stage yes, you

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1 important to me and looking at all sides. There is  
2 always another side to it. So I think I would approach  
3 it very fairly and very open-mindedly.

4 Q. So as you look at Mr. Mamou, I take it then  
5 that you would feel comfortable telling me and through  
6 me -- him that you should be chosen to sit as a juror in  
7 this case?

8 A. Uh-huh.

9 Q. Do you have any questions of me?

10 A. No.

11 Q. Thank you.

12 (Court admonishes juror.)

13 THE COURT: For the purpose of the record,  
14 before we go any further, the next panel, which is due  
15 shortly, consists of Numbers 91 through 151. Number  
16 146 -- we've all talked about this, but the record  
17 doesn't reflect it -- is a medical doctor. The  
18 occupation is insignificant. And yesterday when the --  
19 these folks were selected from the panel at the central  
20 jury room, this gentleman informed the jury shepherd  
21 that he was going to be out of town today because of a  
22 previous commitment. And the jury shepherd was told  
23 that it was agreeable to excuse him. Is there any  
24 objection from either side as to that, Mr. McClellan?

25 MR. MCCLELLAN: No, Your Honor.

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1 know that, for lack of a better way of describing it,  
2 you're two-thirds of the way to a death penalty. For  
3 those individuals, that third question is going to  
4 determine his life or death ultimately. Are you also  
5 the type of person that could address Question Number  
6 Three if you're called upon to do so with the same open  
7 mind and the same resistance to making any automatic  
8 answers as you have in the first stage of the trial and  
9 with regard to Question Number One?

10 A. Uh-huh. It really could be the biggest  
11 question, also.

12 Q. And certainly would be if you had answered that  
13 question.

14 A. Yeah.

15 Q. I'm sitting here as a defense attorney. I have  
16 a big decision to make ultimately, whether to give a  
17 thumbs up or thumbs down. And that's about as candid as  
18 I can be. What should I do when it comes -- when Number  
19 88, Stacy Cokinos, comes up, what should I do?

20 A. Well, I'm willing to serve. I think it would  
21 be an incredible challenge. Would certainly be an  
22 educational opportunity. And it is not something I  
23 would enter into lightly at all. And, I mean, I do  
24 think that would kind of -- in my personality, if you  
25 will, that I -- that fairness is one of -- is very

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1 THE COURT: Miss Connors.

2 MS. CONNORS: No, Your Honor.

3 THE COURT: Mr. Hill?

4 MR. HILL: No, Your Honor.

5 THE COURT: Mr. Wentz?

6 MR. WENTZ: No, Your Honor.

7 THE COURT: Mr. Mamou?

8 THE DEFENDANT: No, sir.

9 THE COURT: And do you request he be  
10 excused?

11 THE DEFENDANT: Yes, it is.

12 (Jury panel brought in and seated.)

13 THE COURT: Good morning to you. The case  
14 that we've asked you to come over here so we might visit  
15 with you about your prospective service as a juror in  
16 the case of the State of Texas verse Charles Mamou.

17 Mr. Mamou, stand up and face the jury  
18 panel. Mr. Mamou is represented by his two attorneys,  
19 Mr. Wayne Hill, Mr. Kurt Wentz; and the State of Texas  
20 is represented by two of her Assistant District  
21 Attorneys, Mr. Lyn McClellan and Miss Claire Connors.  
22 First off, ladies and gentlemen, is there anybody here  
23 who, either because of familiarity of face or  
24 familiarity of name, feel that you know any of the five  
25 people to whom you have just been introduced?



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1 Yes, ma'am?

2 VENIREPERSON: I'm Juror Number 133. My  
3 two children were distant relatives of the deceased.

4 MR. MCCLELLAN: What's your number?

5 VENIREPERSON: 133.

6 THE COURT: Yes, ma'am?

7 VENIREPERSON: I'm Juror 150, and my  
8 younger brother was a good friend of one.

9 THE COURT: First off, ladies and  
10 gentlemen, let me visit with you a couple of seconds  
11 about what is going on here. We are in the process of  
12 selecting a jury, and we are finishing the second week.  
13 My best guess is that some of you, if not most of you,  
14 when you saw the questionnaire -- and you could pretty  
15 well figure out it was a case involving an alleged  
16 capital murder -- you probably became terrified,  
17 thinking you were going to get locked up in some dingy  
18 hotel room, kept away from your family and friends and  
19 your loved ones and your job for weeks at a time. I'm  
20 going to tell you right now, that's not going to happen  
21 to you. The reason I can assure you it's not going to  
22 happen to you is because if it happened to you, it would  
23 happen to me; and I've got too many things I want to do.

24 Let me tell you something else. We're  
25 going to spend about an hour-and-a-half here, and we're

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1 11:00.

2 Now having said that, let's talk about  
3 this type of stuff, generally speaking, jury service.  
4 Generally speaking, many of you may very well have never  
5 before served as a juror. I'm going to make the claim  
6 to you that being a juror in a case is no more than a  
7 complicated opinion, being in a strange town and lost  
8 and trying to decide who it is you're going to ask for  
9 directions. You're going to make a decision when they  
10 give them to you. You're going to make the decision on  
11 the basis of the way they present themselves. That is  
12 to say, how sure are they of what they had to say, as  
13 well as the logic of what they have to say? That's what  
14 we want you to do here, to make a decision based upon  
15 what the people say. And the way you can go about  
16 deciding their credibility is how they say it, how  
17 logical, and how much sense does it make to you? I have  
18 heard it explained -- and maybe there is some accuracy  
19 to it -- that being a juror in a case is an awful lot  
20 like being a pallbearer at a funeral. You're in a place  
21 you don't really want to be in. You are doing something  
22 you really don't want to do. You aren't really so  
23 comfortable that you know for sure what's expected of  
24 you next. And the only real reason you're here in the  
25 first place is out of a sense of duty.

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1 going to be through for the day. Third thing I want to  
2 tell you is, get off Judge Judy; because that's been  
3 what conditions most of us. One of the ways it's going  
4 to be different is because Judge Judy only gets to  
5 harass private citizens. She never talks to lawyers.  
6 We talk with lawyers.

7 This is not going to be a particularly  
8 complicated thing. It's not going to be a long and  
9 drawn out thing. The four lawyers and myself recognize  
10 that each and every one of you folks that is here this  
11 morning are laboring, to some degree or another, under  
12 some inconvenience. If inconvenience amounts to  
13 absolutely nothing more than when you backed out of the  
14 driveway to come down here, instead of taking a left at  
15 the stoplight to come to go to work, you took a right.  
16 That right there throws your day off. We all understand  
17 that.

18 We also understand that we are not going  
19 to get the best work product that a jury has if we waste  
20 a jury's time. So we're not going to waste your time,  
21 because what we want is the best product you've got to  
22 give us. But while I can commit to you that we'll get  
23 you out of here on time, I'm never going to be able to  
24 keep that commitment unless you folks let me get started  
25 on time. So that's why 10:30 means 10:30, not ten after

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1 All this process is about is three things;  
2 listen, evaluate, and react. Listen to what the  
3 witnesses say, evaluate the credibility of the  
4 witnesses, and react to their testimony in terms of,  
5 what verdict do you return? That's all this is about.  
6 So you do that same stuff in your work world everyday  
7 some way or another. You're just in a different work  
8 world. And we're going to spend a little bit of time  
9 talking about some stuff.

10 I want to spend some time talking to you  
11 about some of the rules that can come into play during  
12 the course of a trial like this. Whether they do come  
13 into play or not, we don't know; because that will  
14 depend upon what testimony is presented in the case.  
15 But rules -- but we are going to talk about some rules  
16 that we know can come into play. The reason we're  
17 talking about them is this: Because if you're a juror  
18 in the case, we want you to have some sort of an  
19 overview as to what it is you might anticipate; because  
20 it's only fair to us to know if these rules do come into  
21 play, can you follow them? Because as a juror, your  
22 oath would be not only would you follow the rules that  
23 come into play, but that you will enforce them.

24 A trial like this -- I say "like this" --  
25 a criminal trial, all criminal trials can come in two

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1 parts. The first part of the trial, the jury's only  
2 concern is going to be deciding whether the defendant is  
3 or is not guilty. If the jury finds the defendant not  
4 guilty, the case is over with and that's that. We just  
5 simply don't punish people who didn't commit a crime.  
6 If a jury finds a defendant guilty, we come back to the  
7 second phase of the trial; and you can hear additional  
8 testimony that's going to be different from the  
9 testimony you heard at the first phase of the trial.

10 And the reason the second phase of the  
11 trial exists is to arm you with information as to -- to  
12 help you better make a decision to what punishment  
13 should be imposed to the person that you would have  
14 necessarily found guilty of having committed the crime,  
15 or we wouldn't have had a punishment phase. So, since  
16 the purpose for the two phases is remarkably different,  
17 the focus of the evidence is going to be remarkably  
18 different.

19 At the first phase of the trial the  
20 evidence is going to focus on the offense that was  
21 committed. Who did it? Where was it done? How was  
22 it done? When was it done? What was the relationship  
23 of the parties, if there was one? What was the motive  
24 for having done it, if there was one and if it's not?

25 All the things about the crime you'll hear

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1 at the first phase of the trial. The second phase of  
2 the trial, the focus of the evidence is going to shift;  
3 and it's going to get off the defendant that you would  
4 have found guilty of having committed the crime; and  
5 instead, the focus of the evidence on the second phase  
6 of the trial is going to focus upon the character, the  
7 background, and the involvement of the defendant on  
8 trial with the crime that was committed. It's just like  
9 you, at home, when you are disciplining and raising  
10 children. If you tell a child to do -- not to do  
11 something and they do it immediately one time after, you  
12 might do something, might react one way. If the child  
13 does it twelve times within the first hour after you  
14 tell them not to do it, you might react a different way.  
15 You want to know who you're dealing with.

16 So, we want you to know at the second  
17 phase of the trial the character, the background, the  
18 good stuff, the bad stuff, if there is any of either,  
19 about the defendant on trial. So, that's how the trial  
20 can unfold or will unfold, if there are two phases.

21 First phase the jury's only concern is  
22 deciding guilt or innocence. Second phase the jury's  
23 only concern is deciding what punishment should be  
24 imposed. Now at the conclusion of the testimony at each  
25 phase of the trial, I will give you in writing what is

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1 called the Court's charge. The Court's charge will  
2 contain all of the law that applies or that is raised by  
3 the testimony that's present in the case. You'll have  
4 that charge, that written charge, with you back in the  
5 jury room during the whole time that you're  
6 deliberating.

7 So it's for that reason, that reason that  
8 I just mentioned, why you don't have to try and memorize  
9 what it is I'm getting ready to tell you. You don't.  
10 Because if these rules come into play, you'll have these  
11 rules in writing in the jury room. But I want to give  
12 you some idea before we start on the -- some of the  
13 rules that can come into play. It just simply might  
14 take some of the surprise, therefore, some of the  
15 anxiety you might have out of it for you.

16 First off, let's talk about what in the  
17 world a jury does in the trial of a case as compared to  
18 what it is a Judge does in the trial of a case. A jury  
19 in a trial is the exclusive judges of the facts proved,  
20 of the credibility of the witnesses, and of the weight  
21 that you want to give to their testimony, meaning as to  
22 the first witness, it may very well be after that  
23 witness finishes testifying that the jury chooses to  
24 believe one hundred percent of what that witness says.  
25 As to the second witness, after that one finishes

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1 testifying, it may very well be that the jury chooses to  
2 disbelieve one hundred percent whatever that witness  
3 says. As to the third witness in the case, after that  
4 one concludes, it may be that the jury chooses to  
5 believe some and disbelieve some of what that witness  
6 says. That is exclusively the jury's function, to sort  
7 out the credibility of the witnesses and what weight  
8 should be given to those credible witnesses that you  
9 find in the trial of a case. Determining the weight to  
10 the testimony is as important as determining the  
11 credibility; because if we had a case where there were  
12 fifty witnesses who testified, obviously all fifty of  
13 them can't be testifying about something of exactly the  
14 same magnitude.

15 So sometimes you might find some testimony  
16 to be more heavily weighted than others. That's your  
17 call. But the jury's function is to determine the  
18 credibility of the witnesses and the weight you want to  
19 give to their testimony. My function, on the other  
20 hand, has absolutely nothing to do with deciding about  
21 the believability of witnesses. My function is to  
22 listen to everything that's said from the witness stand.

23 Whether I believe it or not makes  
24 absolutely no difference. I listen to everything that  
25 is received. And as a result of what is said, I place

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1 in the Court's charge for you all of the law that has  
2 been raised by the testimony of the witnesses in the  
3 case. So what you'll do is you'll take all the  
4 witnesses' testimony, determine what aspects of it are  
5 credible; therefore, extract from the Court's charge the  
6 applicable law that applies to the credible witnesses.  
7 And between those two functions, we would come up with  
8 what we think is the right decision to reach based upon  
9 the evidence as you believed it to be and the law as it  
10 was given to you in the Court's charge. That's the job  
11 that each of us have.

12 Now, there is only one Rule that exists in  
13 our system that affects how a jury gauges the  
14 credibility of witnesses. And I think that rule -- I  
15 hope that you'll find that the Rule really makes sense.  
16 The Rule is simply this: Our law does not permit jurors  
17 to determine the believability of witnesses before the  
18 witnesses ever testified. Does that make sense? You  
19 got to give somebody a run. You got to hear what they  
20 say before they ever say it. The idea being, we can't  
21 choose to automatically believe. We can't choose to  
22 automatically disbelieve what a witness says simply  
23 because of their occupation, for example, and not for  
24 any other reason. Can you imagine what kind of a fix we  
25 would be in if our law said everybody who testifies at

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1 the courthouse is either a junior high school principal  
2 or accountant. They have to all believe that anybody  
3 who testifies at the courthouse is either a used car  
4 salesman or a lawyer. They can't ever believe. You  
5 believe who you want to believe. That's your -- that's  
6 what we'll call upon you to do. But you base that  
7 decision upon the quality and the content of what a  
8 witness says, not simply because they might happen to  
9 possess a job for which you have a great degree of  
10 fondness or one for which you might have a substantial  
11 amount of disdain.

12 That can be an issue; because in this  
13 case, this defendant being charged with the offense of  
14 capital murder, I assume, perhaps wrong, but I'm  
15 getting -- I'm going to be accurate -- that there is  
16 going to be testimony from police officers. I say  
17 police officers. Law enforcement officers. Could be  
18 police. Could be sheriffs. Could be constables,  
19 whatever; but some law enforcement officer.

20 Our law says that law enforcement officers  
21 are not entitled to any more believability before they  
22 testify than anybody else. And the reason our law says  
23 that is because we recognize that law enforcement  
24 officers are extractions from the human race; therefore,  
25 there are going to be some good ones and maybe some that

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1 aren't so.

2 And what we're going to ask you to do as a  
3 jury is withhold making a decision as to whether you do  
4 or do not believe a witness, be they police officer, law  
5 enforcement officer, or somebody else, until after you  
6 have heard their testimony. And then based upon the  
7 quality and the content of that testimony, you determine  
8 for yourself whether you do attach credibility to their  
9 testimony or you do not. And if you do attach  
10 credibility to it, how much weight do you give to it.

11 And the reason for that is this: Every  
12 single one of us that's in here, in this room right now,  
13 comes into this room armed with our own life  
14 experiences. Some of them are good. Some of them are  
15 bad. Most of them probably are somewhere in between.  
16 But if we, for example, as we were growing up, grew up  
17 with a kid next door whose name was Johnny and we always  
18 thought that Johnny was the neatest, the nicest, most  
19 trustworthy little kid or human being we'd ever known in  
20 your lives, and we had nothing but admiration and  
21 respect for him both in terms of his judgment, as well  
22 as his integrity. And Johnny went off to become a law  
23 enforcement officer. Just because we liked and were  
24 very fond of Johnny because of his judgement and his  
25 integrity, that doesn't necessarily mean that everybody

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1 that Johnny works with has the same judgment and the  
2 same integrity. Now maybe some of them do; but then  
3 again, maybe some of them don't.

4 The flip side of that coin is, if you were  
5 out driving around about five years ago and it was 10:00  
6 o'clock at night or whatever the time of day it was and  
7 you were pulled over by some police officer, stopped on  
8 traffic, charged with having committed a traffic offense  
9 that you know you didn't do and you're completely not  
10 guilty and the person was rude to you, nasty to you,  
11 harassed you, and you got absolutely an unpleasant  
12 experience as you ever had in your whole life. Just  
13 because that person, five years ago, that law  
14 enforcement officer was rude and nasty and harassed you  
15 doesn't mean all the rest of them are going to be that  
16 same way. Now again, maybe some of them are. Then  
17 again, maybe some of them aren't. That's why somebody  
18 with a uniform doesn't get either the benefit of having  
19 Johnny being in your life sometime in the past, nor do  
20 they get the detriment of the police officer that pulled  
21 you over and harassed you. That person that walks in  
22 this court in the uniform to testify in this case has  
23 the right to have you accept or reject his or her  
24 testimony on the basis of quality of what it is they  
25 tell you, the information they possess, and the way they



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1 deliver.

2 So, I will tell you now, tell you later,  
3 that no juror can make a decision as to a person's  
4 believability before they ever hear the person testify  
5 and that we can't give anybody a leg up, nor can we hold  
6 anybody to a higher standard as to credibility simply  
7 because of their job and for no other reason. Is there  
8 anybody here who has any quarrel, or any disputes, or  
9 any disagreement with that facet of our law.

10 Okay. In this case, ladies and gentlemen,  
11 this defendant stands charged by indictment with the  
12 offense of capital murder. It is alleged to have  
13 occurred in Harris County, Texas, on or about December  
14 7th of 1998. So we're talking what? Ten months ago in  
15 round numbers. I will tell you in the Court's charge  
16 and I will tell you now -- excuse me. Before I get into  
17 that, let me say this: Engaging in credibility of  
18 witnesses. If you came down here today thinking that  
19 you're going to hear a whole bunch of out and out lying  
20 going on from the witness stand, I'm going to tell you  
21 it can happen and it does. But I'm also going to tell  
22 you that more often than not, what happens is citizens  
23 come down here and testify and try to recall something  
24 that they saw for a brief period of time in their life  
25 and give us as good an accounting of the events as they

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1 laboring under the conditioning process that television  
2 has given us as to a courthouse.

3 Judge Judy, my absolute all time favorite;  
4 Mills Lane, the guy who's also the referee in the ring  
5 for the heavyweight boxing championship fights; and a  
6 few others; and even old Perry Mason. Do you remember  
7 Hamilton Burger, who was the prosecutor? Hamilton just  
8 died -- I don't know what his real name is. He just  
9 died about two months or so ago. I read it in the  
10 paper. I always used to wonder as a kid when I would  
11 watch Perry Mason shows. I didn't know where the  
12 imaginary community was where Perry Mason did his work.  
13 I figured it to be Los Angeles, but I was always amazed  
14 people continued to elect Hamilton Burger as their  
15 Assistant District Attorney, when he never won a case.

16 But at any rate, that's what we go  
17 through. And we watch the news at night, and I watch  
18 the same news as you do. And in the first three minutes  
19 out of every newscast I want to watch, a body is being  
20 taken away. Then you hear a snippet about what's  
21 supposed to have happened, but then they have to break  
22 away for a commercial. And you've got to wonder, am I  
23 really getting the full idea about what happened? If  
24 we don't have enough dead bodies one night, they'll go  
25 up to St. Paul, Minnesota, and show us some of theirs.

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1 possibly can. Sometimes there are going to be conflicts  
2 from Witness One, to Witness Two, to Witness Three as to  
3 what was said or what they saw.

4 Conflicts, inconsistencies, don't amount  
5 to intentional lies. For example, as to the sixty of  
6 you who are here, if we took you out in this hallway  
7 right now and staged some dramatic event for you, had it  
8 last twenty seconds, terminate the event and brought  
9 each one of you in here individually and asked you what  
10 it was that you saw, you know, we'd get sixty different  
11 stories.

12 Because if you were closer to it means you  
13 could see it better than hear it. Some of you could  
14 hear it better than you can see it. Some of you were in  
15 the back and you couldn't hear it, couldn't see it.  
16 Some of you were in the front, and you could see it,  
17 could hear it, but you're so disgusted with being here  
18 in the first place that you just shut them out. The  
19 point being, the first person that testifies as to what  
20 they saw and did doesn't make the other fifty-nine who  
21 tell something different than that a lie. It means that  
22 their observations from their perspective were just  
23 simply different. And certainly it can be the same in a  
24 trial, but I just want to put that in; because I know  
25 that most of us who are here today are here today

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1 We come down here at the courthouse, and that's the way  
2 we start thinking things are. And they aren't.

3 Let's talk for just a couple of minutes  
4 about some rules that do come into play in all criminal  
5 cases and talk about why they are the way they are. And  
6 hopefully -- and the reason I'm spending a little bit of  
7 time talking to you about why the rules are the way they  
8 are is, hopefully, it will give you a little bit more of  
9 a broader foundation and understanding of why we work  
10 the way we do work.

11 First off, I will tell you in the Court's  
12 charge and I'll tell you now, the fact that some  
13 individual was arrested for having committed a crime,  
14 the fact that somebody was charged with having committed  
15 a crime, the fact that somebody was indicted for having  
16 committed a crime, may not be considered by any Judge or  
17 by any jury as evidence that they, in fact, did commit  
18 that crime.

19 Now, how in the world could that be?  
20 Well, how about this: Let's say that two months ago,  
21 today in Houston, Texas, there was a burglary at a  
22 particular residence. And just right now, through that  
23 door, in walked eight Houston Police Officers and arrest  
24 me today for having committed that burglary two months  
25 ago. How can it possibly be that my arrest today is



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1 evidence that two months ago I committed that burglary?  
2 It can't be. It's not.

3 Now, those police officers who arrest me  
4 today for having committed that burglary two months ago  
5 may have nine buckets full of wonderful evidence that  
6 does, in fact, show that two months ago I committed that  
7 burglary. And at the trial, that's what they present to  
8 the jury. But the fact that I am -- the singular event  
9 of my arrest today can't possibly be any evidence that  
10 two months ago I committed that crime. The fact that I  
11 was hard -- the fact I was charged today of having  
12 committed that offense two months ago, a singular event  
13 of me being charged, is no evidence that I committed  
14 that crime. The fact that I was indicted today for  
15 having committed that crime two months ago, the singular  
16 event of my indictment, is no evidence I committed that  
17 crime.

18 Because can you see if it were evidence  
19 then why would you have a trial? Because the evidence  
20 is there, you were arrested. And we all know that's not  
21 the case. Because some of us here have been given  
22 traffic tickets. And we know that that was an arrest,  
23 and we know we were charged, and we also know we didn't  
24 do it.

25 So I'll tell you in the Court's charge and

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1 beyond a shadow of a doubt. They do not have to prove a  
2 person's guilt beyond every doubt. They do not have to  
3 prove a person's guilty beyond all doubt. That's never  
4 been the law in this country. It's never been the law  
5 in this country. And in all reasonable probability, it  
6 never will be the law in this country. What, however,  
7 is the law in this country is that the State must prove  
8 a person's guilt beyond a reasonable doubt.

9 In the Court's charge I will give you the  
10 definition as to what a reasonable doubt is. I'm going  
11 to right now, also, give you that definition so starting  
12 out, you will have some sense or feel for what we're  
13 talking about. It is not required that the prosecution  
14 prove guilt beyond all possible doubt. It is required  
15 that the prosecution prove guilt beyond a reasonable  
16 doubt concerning the defendant's guilt.

17 A reasonable doubt is a doubt based on  
18 reason and common sense after careful and impartial  
19 consideration of all of the evidence in the case. It is  
20 the kind of doubt that would make a reasonable person  
21 hesitate to act in the most important of his own  
22 affairs. Proof beyond a reasonable doubt, therefore,  
23 must be proof of such a convincing character that you  
24 would be willing to rely and act upon it without  
25 hesitation in the most important of your own affairs.

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1 I'll tell you now, the fact that somebody was arrested  
2 for a crime, the fact that somebody was charged with  
3 having committed a crime, the fact somebody was indicted  
4 for having committed a crime, those three events cannot  
5 ever be considered by a jury as any evidence that, in  
6 fact, the defendant on trial did commit the crime.

7 Those three events were a necessary occurrence to get a  
8 case into a courtroom so that a jury can be selected so  
9 that they can hear evidence to determine whether the  
10 defendant on trial did, in fact, commit the crime. Is  
11 there anybody here who has any quarrel, who has any  
12 disagreement with that particular aspect of our law?

13 In this case, like all criminal cases, the  
14 State's required to prove that a person is guilty. The  
15 burden, the responsibility of proving a person's guilt,  
16 is upon the State. And please make that thing go away.  
17 I'll bet some of you, Perry Mason shows are one of those  
18 things, like some of you, maybe all of you, have heard  
19 the phrase, find somebody guilty beyond a shadow of a  
20 doubt. Anybody ever hear about the shadows of doubts?  
21 You've got to find somebody guilty by beyond all doubt,  
22 beyond every doubt. Ladies and gentlemen, that's not  
23 the law in this country.

24 The State, in order to obtain a conviction  
25 in a case, does not have to prove the person's guilt

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1 That is the definition that the law requires I give to  
2 you as to the term, reasonable doubt. It is the amount  
3 of proof necessary for you, after having evaluated all  
4 of the evidence in the case, to satisfy yourself that  
5 the defendant is, in fact, guilty. And it must be the  
6 degree of proof that you would be willing to conduct in  
7 your affairs.

8 The point is, it is always, always, always  
9 the State's job to prove that a person's guilty. It is  
10 never ever, ever a defendant's job to prove that he or  
11 she is not guilty. Starting out every trial, every  
12 defendant starts out being not guilty. And that  
13 defendant stays not guilty unless or until, during the  
14 course of the evidence presented during the trial, the  
15 State's evidence overcomes that presumption of being not  
16 guilty and establishes beyond a reasonable doubt in the  
17 jury's mind the fact that the defendant is, in fact,  
18 guilty.

19 Now, some people sometimes say, well, I  
20 don't think that's the way it ought to be. I think a  
21 defendant ought to have to prove that he or she didn't  
22 commit the crime. And I'd ask you to consider this for  
23 just a second. This is the 17th of January (sic) of  
24 1999. Let's go back five years ago today, 17th of  
25 January (sic) of 1994. And the reason they'll go back

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1 five years is to pick a day that's far enough to go back  
2 in our lives that maybe we don't have a specific  
3 recollection as to what it was we do throughout the  
4 course of that day.

5 Now if that day was a birthday, an  
6 anniversary, some significant event in your life that  
7 does cause you to remember that day, then you please  
8 select another one. Pick August 12, 16th, whatever.  
9 But let's say when we get through with this process  
10 right here, you're right by the elevators. And a nice  
11 deputy sheriff in and for Harris County, Texas, comes up  
12 to you and says, Excuse me, are you Mr. "X"? Or, Are  
13 you Miss "Y"? And you say, Yes, I am. And the deputy  
14 sheriff says, While you were in that courtroom making  
15 yourself available for jury service, a Grand Jury in  
16 Harris County, Texas, today, in one of their secret  
17 sessions -- and I will tell you folks that the Grand  
18 Jury sessions are all required to be held in secret. A  
19 Grand Jury, in one of their secret sessions today, has  
20 returned an indictment against you, charging you with  
21 having, on the 17th of September of 1994, committed the  
22 offense of sexual assault of a child.

23 Now, it's your job to prove that you  
24 didn't commit that crime. And if you don't remember  
25 what it was you did on the 17th of September of 1994,

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1 what do you guess the second thing is that you're going  
2 to do after having received that information from that  
3 deputy sheriff? The first thing we know would have  
4 been, you passed out. And you would have said, I didn't  
5 do that. And, of course, you didn't.

6 The point being, how do you prove you  
7 didn't? Well, you don't. You can't. It's not  
8 possible. You might say to yourselves, well, the 17th,  
9 1994, was a workday. I know that traditionally I get to  
10 work at 8:15 in the morning, and ordinarily I get home  
11 6:15 to 6:30 in the evening. And let's just say for the  
12 purposes of this conversation that September 17 of '94  
13 was a workday, and I don't have any idea whether it was  
14 or wasn't. But let's say it was. That means that  
15 you're armed with information to tell that jury to whom  
16 you have to prove that you did not commit that crime  
17 when you went to work that day and then you went home.  
18 And you can't possibly think, in your wildest dreams,  
19 that you committed that crime.

20 The point being, it's not your job to show  
21 you didn't do it. It's the State's job to show you did  
22 do it. Most all of us, from the time we were little  
23 kids and started to have any interaction with other kids  
24 on a social basis, there was an elementary thread of  
25 justice in our body and that was this: If somebody in

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1 our peer group, our other little buddies, started  
2 talking around to our buddies that we had done something  
3 wrong, the rule was the people doing the blaming are the  
4 people who have to do the proving. If the kid's blaming  
5 me for having done something wrong, it's the kid's job.  
6 Show my buddies that I did something wrong. And that  
7 elementary system of justice is exactly what we have in  
8 a courtroom. The people doing the blaming are the  
9 people who have to do the proving. The State's doing  
10 the blaming. The State has to do the proving. How much  
11 proving does the State have to do? I don't know. But I  
12 do know that whatever they have to do has got to be  
13 enough that it satisfies a jury beyond a reasonable  
14 doubt as to the defendant's guilt.

15 Again, it is always, always, always the  
16 State's job to prove that a person is guilty. It is  
17 never ever, ever a defendant's job to prove that he or  
18 she is not guilty. Is there anybody here who has any  
19 quarrel, disputes, or disagreement with that facet of  
20 our law?

21 Okay. Many of you have, perhaps from time  
22 to time, followed a trial, or some trial you might have  
23 had some interest in in some way or another in the  
24 media, whether it be the newspaper, or television, or  
25 "60 Minutes," or something like that. You probably have

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1 a feel for the idea that sometimes during the course of  
2 a trial you might not get to hear some of the things  
3 that you would like to hear. And I want to spend a  
4 couple of minutes talking with you about that; because  
5 I'll bet that every single one of us, when it comes down  
6 to making what we think are important decisions in our  
7 life want to assemble, get together all the information  
8 we could possibly get together for the purposes of  
9 helping us make better informed and a more intelligent  
10 decision. We ask you to come down here to give of your  
11 time to serve as a juror in a capital murder case to  
12 determine first off, did the defendant on trial commit  
13 the capital murder? That's a pretty heavy decision, in  
14 and of itself. And then if he did do it, should he  
15 receive a life sentence or a death sentence? That's  
16 probably even a heavier decision.

17 So almost always, everybody wants to hear  
18 all sorts of things, and really, for the purposes of  
19 broadening their comfort zone, making them feel better  
20 about the decision they've reached. When you go out and  
21 you shop for a car, you go to various car places, and  
22 you get all the information you can possibly get, and  
23 you talk to all the salesmen. When you're going out to  
24 shop for a house, you do exactly the same thing. You  
25 get a realtor or several of them, perhaps, and get all

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1 sort of information.

2           You try to assemble accurate information  
3 when you go out shopping for a spouse, but not always is  
4 it available. But you try to get together all the  
5 information you can. You come down here to the  
6 courthouse in a courtroom, you listen to a case, the  
7 case is over with, and you go back to begin your  
8 deliberations. And you say to yourselves, Why in the  
9 world didn't Lawyer A bring us evidence about so-and-so?  
10 Why didn't lawyer B ask the question so and so? Well,  
11 it may very well be that that evidence wasn't available  
12 in the first place. It may very well be that evidence  
13 never existed in the first place. Your particular  
14 question that you wish had been asked may very well have  
15 been a wonderful question, but is one to which there was  
16 no answer.

17           I want to spend some time talking about  
18 that; because since it is the State's obligation to  
19 prove a defendant guilty, and since the defendant  
20 doesn't have to prove that he is not guilty, that means  
21 the State must present evidence to you. It means, also,  
22 that the defense does not have to present any evidence  
23 to you, because it's not the defendant's obligation to  
24 prove anything. It's the State's obligation to prove  
25 guilt. Nor is it the defense's obligation to disprove

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1 anything that the State presents to you.

2           And starting off we might say to  
3 ourselves, well, I'd have to hear from both sides before  
4 I could make a decision. Well, obviously that's not the  
5 case; because you're the judges of the credibility of  
6 the witnesses. You determine how much weight to be  
7 given their testimony. And if the law -- and the law  
8 doesn't say that if you only hear from the State, you  
9 have to believe their witnesses. It doesn't say that  
10 any more than the law says if you go out to shop for a  
11 car, you've got to believe what the first person says,  
12 too. That's not the case.

13           So in many cases, it may be after the  
14 State has presented their evidence, you might hear the  
15 State -- excuse me -- the defense rests right behind  
16 them and presents no testimony at all. You're still  
17 going to be called upon to decide whether the strength  
18 of the State's evidence is such that it proves the  
19 allegations beyond a reasonable doubt. Perhaps in some  
20 instances it does. Perhaps in some instances it does  
21 not.

22           You may have in other cases situations  
23 where the State presents its evidence. They rest. -  
24 Defense presents the defendant, himself, as a witness,  
25 along with other witnesses. You do get to hear from

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1 both sides. Let's talk for just a second about what  
2 happens if a defendant in a criminal case does testify  
3 in his case. First off, a defendant does not have to  
4 testify in his case; because he doesn't have to prove he  
5 didn't do it. If a defendant does testify, that means  
6 that the defendant does not get any extra credit for  
7 having done something that the law doesn't require him  
8 to do. You don't give a defendant points or some sort  
9 of a break or some kind of credit because he testifies  
10 in his own case and the law didn't require it.

11           Secondly, because a defendant testifies in  
12 his case, the fact that there is the presumption of  
13 innocence, the presumption of being not guilty never  
14 ever spills over to being the presumption that the  
15 defendant on trial, if he testifies, is telling the  
16 truth. There is no presumption anywhere in our law that  
17 any human being that's alive on the face of this earth  
18 is presumed to tell the truth before they testify. It  
19 simply doesn't exist. So that's what happens if a  
20 defendant does testify in his case. He gets no extra  
21 credit, and there is no presumption he's telling the  
22 truth. You would be just as critical of the defendant  
23 as a witness as you were critical of the State's  
24 witnesses when they testified. You listen to what they  
25 say, evaluate it, and make your decision as to their

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1 credibility on the basis of the quality and contents of  
2 their testimony.

3           Third possibility. It may be that after  
4 the State rests, the defense presents witnesses but did  
5 not present the defendant. You'll take the witnesses  
6 from the defense. You take their testimony, put it into  
7 the mix with all the other testimony in the case, and  
8 determine for yourself, has the State proved the  
9 allegations beyond a reasonable doubt?

10           You may say to yourselves, well, I sure do  
11 wish I would have heard from the defendant. It would  
12 have made my job a whole lot easier. And that may very  
13 well be the case. You say to yourselves, when the case  
14 is all over with, boy, I sure would like to have heard  
15 the defendant's side of this story. That's a perfectly  
16 natural response; because that's what we do all our  
17 lives, is check one side off against the other. That's  
18 also a perfectly natural response. But I will tell you  
19 in the Court's charge and I'll tell you now, that if a  
20 defendant in a case does not testify in his or her  
21 behalf, this is no circumstance that any Judge or jury  
22 could use to infer, to insinuate, or to suggest that the  
23 defendant is, in fact, guilty of the offense because he  
24 or she did not testify. Because the law doesn't require  
25 them to prove that they didn't do the crime. The law



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1 requires the State to prove they did commit the crime.

2 Now that's just different, probably, than  
3 the way all of us live our daily lives; because we want  
4 to hear everything we can hear about something before we  
5 decide. You have a kid at home. Kid comes in -- and  
6 it's happened to me -- kid comes in, a six-year-old  
7 child, daughter, with her hand on her hip one evening,  
8 just takes a big old deep breath and got as dramatic as  
9 I've ever seen. And she says, Daddy, do you know what  
10 your other child did? No, I don't. You know those  
11 cookies mom had been spending a lot of time on? Yes.  
12 You know, she's saving them.

13 A. Yeah.

14 Q. Amanda ate them. What do I do? You've been  
15 thrown something like that. You get the other kid in  
16 the room. We do it all the time. Why do we do it?  
17 Well, we want to check off one kid against the other,  
18 because we aren't so sure we believe the first kid.  
19 You're at work. Your job at work is to produce a widget  
20 at seventy-five cents a unit. Out of the blue somebody  
21 comes in and says, Hey, I know how we can do that same  
22 widget for sixty-five cents a unit, save a dime apiece.  
23 What do you do? You get everybody up and down the  
24 marketing chain, everybody up and down the manufacturing  
25 chain. Can we really do it for sixty-five cents? You

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1 want to get all the information you can. You're on the  
2 committee at church. Your job is to replace the  
3 preacher who just retired. You want to talk to all of  
4 them, see what it is they can do. You're getting ready  
5 to vote for next year's PTO president. Same thing. You  
6 want to know what it is they're going to do, because you  
7 want to hear from everybody and get all the information  
8 you can. And then I ask you to come down here at the  
9 courthouse. And we tell you right up front, but you may  
10 not get to hear everything you want to hear. And you  
11 say to yourself, well, that rips it.

12 And let's talk about why you're not going  
13 to get to hear, perhaps, in a case everything you wanted  
14 to hear. Because that older kid that proved to the --  
15 that told me that her little sister had eaten her  
16 cookies did not have to prove that to me beyond a  
17 reasonable doubt. Because her little sister wasn't  
18 going to get executed if she did. The guy at work who  
19 tells you, we can make this seventy-five-cent widget at  
20 sixty-five cents doesn't have to prove that to you  
21 beyond a reasonable doubt; because he's not going to get  
22 executed. The preacher who you talk to to replace the  
23 one that's retiring, who commits to you, I'm going to  
24 double the size of this congregation in three years, is  
25 not going to get executed if he doesn't do it. And same

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1 with the PTO president.

2 And in a courtroom, that's exactly what  
3 happens is they do get executed, or they can get  
4 executed if they do it. That's why the burden of  
5 proving a defendant guilty is upon the State, because  
6 they're claiming he did it. Therefore, they have to  
7 prove that he did it, and they have to prove it beyond a  
8 reasonable doubt. And there is no obligation on any  
9 defendant to prove that he didn't do it or to disprove  
10 anything that the State presents to you.

11 And at the conclusion of the evidence in  
12 the case, you're going to be asked to make a decision.  
13 And your decision, whatever it winds up being, is going  
14 to have to be based upon the information that the  
15 lawyers gave to you during the course of the trial.  
16 That is to say, the evidence in the case. Sometimes  
17 that evidence is more than enough to justify a jury  
18 finding a defendant guilty beyond a reasonable doubt.  
19 Sometimes it's not. When you're asked to make a  
20 decision and you say, I can't because I've only heard  
21 one side, then what you're suggesting to me is you don't  
22 have enough information to find them guilty beyond a  
23 reasonable doubt.

24 When I was a kid growing up, there was a  
25 brief time in my life we ate like horses. At 6:00

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1 o'clock every evening at the dinner table, mom would  
2 bring in the dinner platter and there would be seven  
3 pieces of meat on that platter. And the fastest fork  
4 always got the best piece of meat. And as soon as those  
5 seven pieces of meat were gone, one for mom, one for  
6 dad, and one for the five boys, there was nobody at that  
7 table that thought mom was going to take that platter  
8 back to the kitchen and load it back up again. We did  
9 with what we had, and it's the same in the courtroom.

10 When both sides close the evidence in the  
11 case, you got what you're going to have. It'll either  
12 be enough to prove a person's guilt beyond a reasonable  
13 doubt -- and if it is, it's your obligation to do  
14 that -- or it's not enough to prove a person's guilt  
15 beyond a reasonable doubt. And in that event, it's the  
16 jury's obligation to return a verdict of not guilty.

17 But the point of what I'm trying to get  
18 at, as a jury, your obligation is to base a verdict on  
19 the testimony that was presented, not to guess as to  
20 what the testimony that you wanted to hear but did not  
21 hear would have been, nor to speculate as to why you  
22 didn't hear it. And if the defendant in the case does  
23 not testify, no Judge and no jury can use that as a  
24 suggestion or inference that the defendant is hiding  
25 something and, therefore, didn't testify. Because it's



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1 not his job to prove he didn't do it. It's the State's  
2 job to prove that he did it. Is there anybody here who  
3 has any quarrel, dispute, or disagreement with that  
4 facet of our law?

5 VENIREPERSON: I don't disagree with you,  
6 but I'd still want to hear his story.

7 THE COURT: I understand, and that's a  
8 perfectly natural thing. But can you see that if you  
9 don't hear it, that doesn't make the quality of the  
10 State's testimony any better?

11 VENIREPERSON: Right, but I'd still want  
12 to hear it.

13 Q. I got you. Okay. There are a couple of things  
14 I want to visit with you about for a couple of minutes.  
15 In our state a person convicted for -- a person who is  
16 convicted of the offense of capital murder can receive  
17 one of only two possible punishments. One of those  
18 possible punishments is life. One of those possible  
19 punishments is death.

20 I want to spend just a very brief time  
21 visiting with you about how that decision is made. I  
22 don't want you to worry about the preciseness of what  
23 I'm going to say. Right now, I want you to know about  
24 the system, the mechanics. We talked about the fact  
25 that the first phase of the trial, the jury's concerned

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1 numbers, are you satisfied beyond a reasonable doubt  
2 that the defendant would be a future danger? That's  
3 not precisely what it says, but just to give you a feel  
4 for it.

5 Can you see that no matter who the  
6 defendant, no matter what the evidence was, no matter  
7 who the victim was, there's never going to be but two  
8 possible answers to that question, yes or no; and the  
9 jury will answer the question whichever way they believe  
10 the evidence dictates?

11 The second question will ask the jury,  
12 after taking into consideration all of the evidence,  
13 including the circumstances of the offense -- that's  
14 going to be what you heard the first part of the  
15 trial -- also including the character and background of  
16 the defendant, as well as the defendant's personal moral  
17 culpability, responsibility, that's going to be what you  
18 heard the second part of the trial.

19 So, what the first half of the second  
20 question tells the jury is to go back over all the  
21 evidence in the case, ask yourself this: Is there a  
22 sufficient mitigating circumstance, or perhaps  
23 circumstances, that make you think that a life sentence  
24 would be a more appropriate verdict than a death  
25 sentence?

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1 with whether the defendant is guilty.

2 The defendant -- if a defendant is found  
3 guilty of capital murder, we come back and we have a  
4 second phase of the trial. You get to hear additional  
5 evidence. At this time the evidence is going to be  
6 about the character and background of the defendant on  
7 trial. Every single good thing he or she has ever done  
8 before in his life, if there are any good things. Every  
9 single bad thing some defendant's ever done before in  
10 his or her life, any bad thing. And you take all that  
11 good stuff and bad stuff that you hear about the  
12 defendant on trial, the second half of the trial, you  
13 pile it onto all this information you heard about the  
14 crime that was committed at the first part of the trial,  
15 and you use every single bit for the purpose of helping  
16 you answer two questions that's going to be your verdict  
17 at the second phase of the trial.

18 Now these questions are always going to be  
19 asked in the order that I'm going to tell you about  
20 them. They're always going to be the same questions.  
21 They don't change. The first question is going to ask  
22 you, do you find from the evidence beyond a reasonable  
23 doubt that there is a probability that the defendant  
24 would commit criminal acts of violence that would  
25 constitute a continuing threat to society? In round

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1 Again, no matter who the defendant, no  
2 matter who the victim, no matter what the evidence,  
3 there is two possible answers, yes or no. If the jury  
4 should answer yes to that first question and if the jury  
5 should answer no to that second question, the law says  
6 that I have no choice; I have no option; I have no  
7 discretion. I must sentence the defendant to death, and  
8 that's exactly what I'm going to do.

9 If, however, the jury should answer those  
10 two questions in any way other than yes and no, in that  
11 order, again, the law says I have no choice; I have no  
12 option; I have no discretion. I must sentence the  
13 defendant to life, and that's exactly what I'll do.

14 So, first off, what we can see is that a  
15 jury never goes out in the State of Texas and  
16 determines, well, I just feel like in this case we ought  
17 to give this one life, and in that case we ought to give  
18 that one death. Juries don't sentence people to life or  
19 death. Juries answer the two questions on the basis of  
20 the testimony that's presented in the case.

21 Secondly, you can see, however, that while  
22 you don't sentence a person to life or death, you're  
23 entitled to know what the effect of your answers is  
24 going to be. And the effect is going to be a yes and a  
25 no, in that order death, and anything else is life. Now

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1 that's just to give you a feel for how it is that the  
2 punishment is determined after the conviction in a  
3 capital murder case. And my notion is that probably  
4 many of you have heard of cases before, capital murder  
5 cases, where at the conclusion of them, a life sentence  
6 is imposed.

7 Some of them can be that a death sentence  
8 was imposed. And keep in mind, if you would, please,  
9 these questions that we talked about, they never change.  
10 Those words are always the same. But in some cases the  
11 defendants are different. Sometimes you have a  
12 seventeen-year-old defendant who's never before done  
13 anything wrong. There's other times you might have a  
14 forty-five-year-old defendant who is a six-time  
15 ex-convict. Sometimes -- always -- not sometimes, but  
16 always the victim's are going to be different. Some of  
17 them during their lifetime would have been more valuable  
18 citizens than others.

19 Always, the evidence is going to be  
20 different. Always, the witnesses are going to be  
21 different. Because just because a witness comes and  
22 says the exact same words that you think in your mind's  
23 eye whatever they might be would be necessary for you to  
24 find somebody guilty. Just because the witnesses used  
25 those words doesn't mean that you're going to believe

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1 that witness. So the witnesses are always different.

2 And lastly, certainly not least, the  
3 juries are always different. If we could have four  
4 juries in this courtroom listening to precisely the same  
5 witnesses testify and at precisely the same time began  
6 their deliberations, we could have had four different  
7 verdicts. So that's why the results of trials can be  
8 life or death, either one. That might be the most  
9 appropriate verdict in the world based upon the  
10 uniqueness in that particular case.

11 So, what I'm simply saying is whether the  
12 decision is made for me to sentence somebody to life or  
13 for me to sentence somebody to death is going to depend  
14 upon the uniqueness of the evidence in that given case  
15 and how that jury evaluated that evidence in coming up  
16 with the answer to those questions we talked about.

17 Now, again, I don't want right now to get  
18 into this in more detail; but I want you to have an  
19 overview as to how it is determined, on the one hand a  
20 life sentence, on the other hand a death sentence. Any  
21 questions so far? Okay. Since what we're saying is  
22 that the death sentence is a possible punishment in the  
23 case, whether it's the appropriate punishment or not,  
24 we'll never know until the trial is over and the  
25 evidence is all in. But since the death penalty is a

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1 possible punishment in the case, I'm obligated to ask  
2 each of you -- and I'm going to do this in a group --  
3 ask each of you a question.

4 Let me tell you what the question is going  
5 to be. First, let me explain the question. And then  
6 the third time through it, I'm going to ask you to  
7 answer the question. Kind of like being in the army.  
8 Is there anybody here who, if after you heard all the  
9 evidence in the case, and if you believe that the  
10 evidence in that case was such that should call you to  
11 answer those two questions we talked about in such a way  
12 that I sentence the defendant to death, is there anybody  
13 here that has a philosophical, a religious, a moral, a  
14 conscientious objection against the consideration of  
15 death as a possible punishment that is so strong, it  
16 would overcome your ability to answer those questions  
17 based upon the evidence, and instead, answer them in  
18 such a way that I would have to make a life sentence --  
19 have to sentence the defendant to life.

20 That is to say, do you have some notion,  
21 whether it's some internal thought, conscientious,  
22 moral, religious, whatever it might be, philosophical,  
23 that would be so strong it would override your  
24 intellectual capacity to analyze the evidence and answer  
25 the questions based upon your intellectual analysis of

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1 the evidence in the case.

2 Now the last time I tried to do that the  
3 folks started off with a pretty good idea about what the  
4 question was until I explained it. Maybe that happened  
5 to you. I don't know. But let me tell you again. I  
6 ask the question one time. Is there anybody here who  
7 has a philosophical, a religious, a moral, or a  
8 conscientious objection to the consideration of death as  
9 a possible punishment in a case wherein after having  
10 heard all the facts and all the testimony in the case,  
11 you thought that was the appropriate punishment, you  
12 would not consider it ever because of your religious or  
13 moral or your conscientious or philosophical feelings  
14 against the death penalty.

15 Now, is there anybody who has an objection  
16 to the death penalty that would never ever, ever permit  
17 you to consider it as a punishment, no matter what the  
18 evidence? First row, anybody there? Yes?

19 VENIREPERSON: I would not.

20 THE COURT: What's your number?

21 VENIREPERSON: 92.

22 THE COURT: Anybody? Ma'am, number?

23 VENIREPERSON: 96.

24 THE COURT: Front right, anybody? Yes,  
25 ma'am?

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1 VENIREPERSON: 102.  
 2 THE COURT: Never, ever, ever?  
 3 VENIREPERSON: Right.  
 4 THE COURT: You didn't convince me.  
 5 VENIREPERSON: I would not.  
 6 THE COURT: Ever, ever, ever?  
 7 VENIREPERSON: Right.  
 8 THE COURT: Second row, please?  
 9 VENIREPERSON: 106.  
 10 THE COURT: 106. Second row, right,  
 11 number?  
 12 VENIREPERSON: 109.  
 13 THE COURT: Nobody else? Third row, left?  
 14 VENIREPERSON: 116.  
 15 THE COURT: 116?  
 16 VENIREPERSON: Yes.  
 17 THE COURT: Nobody else in the third row,  
 18 right? No hands. Back row, just one row? Yes, ma'am?  
 19 VENIREPERSON: Number 130.  
 20 THE COURT: You?  
 21 VENIREPERSON: 133.  
 22 THE COURT: Number, please?  
 23 VENIREPERSON: 137.  
 24 THE COURT: 137. Front row, jury box?  
 25 Number, please?

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1 VENIREPERSON: 143.  
 2 THE COURT: 143?  
 3 VENIREPERSON: Yes, sir.  
 4 THE COURT: Back row?  
 5 VENIREPERSON: 147.  
 6 THE COURT: 7, did you say?  
 7 VENIREPERSON: 147.  
 8 THE COURT: Name?  
 9 VENIREPERSON: 149.  
 10 VENIREPERSON: 150.  
 11 THE COURT: 150? Okay. Let's talk next  
 12 about, when it comes to these kinds of cases, I mean,  
 13 the kind of cases where the death penalty can be a  
 14 possible punishment, the law says we go about the jury  
 15 picking business differently than we would go about it  
 16 in an ordinary case. Specifically, the difference is  
 17 that we have to talk to each of the jurors on an  
 18 individual basis. Obviously, theoretically, it would  
 19 take sixty times longer to talk to each one of you, one  
 20 at a time, than it would take to talk to all sixty of  
 21 you in a group once.  
 22 So, this is what we're going to do. We  
 23 are going to, after a bit -- and I say, after a bit --  
 24 in just about ten minutes the lawyers and I get  
 25 together, and they're going to determine who it is they

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1 want back. What we're going to do is this: We're going  
 2 to break it down into groups. I don't know how many out  
 3 of this group we're going to ask back. But I do know  
 4 we're going to bring five of you back Monday and talk to  
 5 you then. We're going to bring ten of you back on  
 6 Tuesday and talk to you then. We're going to bring five  
 7 more of you back on Wednesday and talk to you then. And  
 8 the remainder of you, however many that is, past twenty,  
 9 we're going to bring back a week from this coming  
 10 Monday.  
 11 Now let's talk about that for a second. I  
 12 mentioned to you earlier that we are not going to waste  
 13 your time. If you're not due back here on one of those  
 14 days -- excuse me -- if you're due back here a week from  
 15 Monday, blow us off. Next week you do whatever it is  
 16 you ordinarily do, and you do it exactly the same way  
 17 you would ordinarily do it. I don't want you here,  
 18 because you can't do anything here. I want you here  
 19 when you can do something here.  
 20 Likewise, if we talk to you on Monday --  
 21 and what we're doing is talking to folks individually,  
 22 for the purposes of creating a pool or a panel. We're  
 23 going to get everybody in that pool, or panel, whoever  
 24 they are, and we've got 24 of them. Now back here on  
 25 Wednesday, the 29th of September, which is a week from

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1 this coming Wednesday, we'll spend maybe as much as two  
 2 hours with them on that day. And on that day when we're  
 3 through, everybody will know who is and who is not a  
 4 juror in the case.  
 5 So if we talk to you Monday, and if we  
 6 invite you back to that panel on the 29th, until then,  
 7 do whatever it is you would ordinarily do. Go to work,  
 8 leave town, go fishing, do whatever it is you do; but be  
 9 back on that day. Now having said that, is -- excuse  
 10 me -- the testimony in the case is going to begin on  
 11 Monday, October 4th. The testimony -- not the  
 12 testimony, but the trial itself will last probably a bit  
 13 more than one week, one work week. The trial will not  
 14 last more than two work weeks. So the week of October  
 15 4th and the week of October 11th. A portion of that  
 16 second week is the duration of the trial.  
 17 Now as I said at the outset, I know that  
 18 everybody here is here, not wanting to be here, and is  
 19 here laboring to some degree or another under some  
 20 inconvenience. My position is that we have passed the  
 21 inconvenience hurdle. My question to y'all is this: Is  
 22 there anybody here who has something going on in your  
 23 life that rises to the level that makes it impossible  
 24 for you to be here one of the days we've talked about;  
 25 Monday, Tuesday, Wednesday of next week or the following

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1 Monday? That's not more than two weeks that we've  
2 talked about, beginning October the 4th. Now front row  
3 left, anybody there? I see no hands. Front row right?  
4 Sir?

5 VENIREPERSON: I will be out of town.

6 THE COURT: When?

7 VENIREPERSON: The 29th through the 6th.

8 THE COURT: And your number is?

9 VENIREPERSON: (Inaudible.)

10 THE COURT: Anybody else on that front  
11 row? Yes, ma'am?

12 VENIREPERSON: I have scheduled vacation  
13 October 7th through the 11th.

14 THE COURT: Okay. Second row left? I see  
15 no hands. Second row right, any hands? I see no  
16 hands. Third row left, any hands? Yes, sir. I see  
17 two hands. I'm sorry.

18 VENIREPERSON: I have two kids and a  
19 husband out of town, scheduled to go out of town October  
20 4th for that week.

21 THE COURT: Okay. And your number?

22 VENIREPERSON: 119.

23 THE COURT: Now is the husband going out  
24 of town, taking the kids?

25 VENIREPERSON: No, he's going out of town.

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1 THE COURT: Thursday.

2 VENIREPERSON: Your Honor.

3 THE COURT: Sir?

4 VENIREPERSON: I also have a problem with  
5 the dates, because I have my child visitation.

6 THE COURT: And your number was what?

7 VENIREPERSON: I'm 109.

8 THE COURT: That's fine. We'll talk more  
9 about it if we need to.

10 VENIREPERSON: Because I have confused  
11 dates.

12 THE COURT: I understand. Thank you.

13 Ladies and gentlemen, let me tell you the next thing  
14 that's going to happen. The lawyers and I -- excuse me.  
15 Before I do that, is there anything I left out?

16 MR. HILL: No, sir.

17 THE COURT: The lawyers and I are going to  
18 get together, and they're going to tell me who it is  
19 they want back. Not a soul here thinks that you ought  
20 to sit here in absolute stone silence while we're doing  
21 this. It may take ten minutes. But I don't know if you  
22 have ever been in a situation -- I know it's happened to  
23 me -- where you're in a room. There is a crowd, and a  
24 lot of people are talking. And you're going to tell a  
25 juicy piece of gossip to somebody. You know, you have

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1 THE COURT: That's the problem. He's  
2 going out of town, leaving the kids there. Did you say  
3 119?

4 VENIREPERSON: 119.

5 THE COURT: And 120?

6 VENIREPERSON: I'll be out of town the  
7 4th, 5th, and 6th. I have surgery scheduled on the 7th.

8 THE COURT: All right. That was third row  
9 left. Third row right, anybody? I see no hands, third  
10 row right. In the last row, any hands? Yes, ma'am,  
11 and your number?

12 VENIREPERSON: 134. And I have business  
13 all day Monday and through next week, various projects  
14 that have already been scheduled.

15 THE COURT: So if we needed you back, we  
16 could get you back Monday, the following week?

17 VENIREPERSON: I don't know. I mean, I  
18 just in-house counsel.

19 THE COURT: I understand.

20 VENIREPERSON: It's busy.

21 THE COURT: Anybody else on that back row?  
22 No other hands. Front row, jury box, any hands? No  
23 hands. Second row, jury box, any hands? No hands.

24 VENIREPERSON: Can I back up? The 23rd,  
25 is that next Wednesday?

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1 to speak loudly enough so the person can hear it over  
2 the noise of the crowd; but you have to also keep it to  
3 where the crowd doesn't hear your gossip. And just  
4 before you deliver the punch line, the crowd stops  
5 talking.

6 I guess what I'm saying to you is this: I  
7 don't care how loud you get, as long as you stay that  
8 loud. That's my only request, folks. Come on up and  
9 let's get this thing on the road.

10 Before we go any further, ladies and  
11 gentlemen, Miss Joyce Williams, would you come up for a  
12 second, please, ma'am?

13 (At the bench, Juror No. 108.)

14 THE COURT: Miss Williams, on your  
15 questionnaire there was a question asked whether or not  
16 you or an acquaintance or family member ever been found  
17 guilty of a crime. And you said -- and you had said  
18 that somebody that you knew had been convicted of a  
19 crime; is that correct?

20 VENIREPERSON: Yes.

21 THE COURT: And who was that?

22 VENIREPERSON: Two of my coworkers.

23 THE COURT: But not you?

24 VENIREPERSON: Oh, no.

25 THE COURT: Okay. Thank you very much.



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1 You can have a seat.

2 (Off-the-record discussion.)

3 (At the bench:)

4 THE COURT: As I understand it, there was  
5 an agreement by and between the parties that as to this  
6 particular panel, the Court has just concluded the  
7 Court's voir dire. These panelists are -- being No. 91  
8 through 151 inclusive, with the exception of No. 146,  
9 that of a group of sixty people, it is agreed twenty-six  
10 of those sixty people may be, for various reasons,  
11 excused. Those sixty -- those twenty-six people, as I  
12 understand, on each side are the following: 92, 96, 7,  
13 8, 9, 1 and 2, 106, 8, 9, 115 and 116, 120, 23, and 26,  
14 130, 131, 3, 5, 7, 141 143, 6, 7, 8, 9, 150. The first  
15 one up, 91.

16 I understand that by agreement by and  
17 between the parties that each of these people's numbers,  
18 as set out, may be excused?

19 MR. MCCLELLAN: Yes, Your Honor.

20 MS. CONNORS: Yes, Your Honor.

21 THE COURT: Mr. Hill?

22 MR. HILL: Yes, Your Honor.

23 MR. WENTZ: Yes, Your Honor.

24 THE DEFENDANT: Yes, Your Honor.

25 THE COURT: Mr. Mamou, do you specifically

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1 request these be excused?

2 THE DEFENDANT: Yes, Your Honor.

3 THE COURT: All right. They're excused.

4 (Continuing in the jury panel's hearing:)

5 THE COURT: All right. Ladies and  
6 gentlemen, if you would, please, I'm going to now tell  
7 you who it is that we want back; and I'm going to tell  
8 you when it is that we want you to be back.

9 Let me, before I do that, tell you this:  
10 I'm going to go through the list. I'm going -- well,  
11 our law says that if we're going to visit with you  
12 individually, we have to visit with you in the same  
13 sequential order that you came over here. For example,  
14 if your number happens to be 273 -- and nobody's number  
15 here is 273. That's why I used it -- we'd have to talk  
16 to you before we talk to 274. So, it is necessary for  
17 everybody to be here at the time we start in the  
18 morning.

19 Every morning that we begin, we will begin  
20 by 8:30. If, for example, you are to be the first  
21 person that we're to talk to that day, and if you don't  
22 come tooling in until 9:15, I want you to know why the  
23 other members of the panel are so furious at you;  
24 because we can't do anything with them, because you  
25 weren't here. So, you have held all of us hostage and

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1 prevented us from working.

2 Please, I go back to what I said earlier.

3 I'll get you out of here, but I can't do it if you won't  
4 let me get started. And there are so very few things in  
5 this world I absolutely care about. One of them is a  
6 clock. And 9:30 doesn't mean sometime in the morning.  
7 8:30 doesn't mean sometime in the morning. See, I even  
8 got that wrong. Please, 8:30, I mean 8:30; and I'll get  
9 you out of here as fast as I can.

10 Now as I go through the list, I will tell  
11 you that everything that we do is going to be in this  
12 courtroom. So, where you are right now is where we want  
13 you to be back. You know the time of morning that we  
14 want you here. It's going to be by 8:30. So the only  
15 variance is going to be what day we want you back, if  
16 you're among the people we want back. And I don't know  
17 if I told you this or not; but of the sixty of you here,  
18 thirty-four of you we want back. So, I'm going to go  
19 through these. I'm going to attempt to go through these  
20 sequentially. What I'm saying is, I'm not going to do  
21 what they used to do to me when I was in school.  
22 They're going to jump around and call your numbers out  
23 and make sure you're paying attention. That's  
24 self-defeating, because that costs me more time. It's  
25 like me grounding my kids. I'm the one that has to stay

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1 home. So unless I mess this up -- and Lord knows I'm  
2 capable of it -- if you don't hear your name called and  
3 or your number called and you hear a number later than  
4 yours, that ought to mean you need not worry about  
5 coming back. Don't get up and bolt out of here just  
6 yet, but that ought to be what that means.

7 Okay. For Monday, there are six folks  
8 that we want back. Those six folks are the following  
9 people: No. 93, Glen Dinkins; No. 94, Matthew Taylor;  
10 No. 95, Linda Cook; No. 99, Judith Barnett; No. 100,  
11 Latonya Glasper; and No. 103, Cynthia Mills.

12 First off, ladies and gentlemen, of the  
13 six names that I called, is there anybody who has any  
14 questions about whether their name was one of those six  
15 names? Any of you have any question as to what day  
16 you're supposed to be back, where you're supposed to be,  
17 or what time you're supposed to be there?

18 Okay. The following group is Tuesday:  
19 Again, the location is the same. The time is the same.  
20 The day is different. Instead of Monday, it's Tuesday,  
21 September 21. No. 104, Janet Johnson; 105, Houston  
22 Hamilton; No. 107, Craig Baker; 108, Joyce Williams;  
23 110, Nohemy Bonilla; 111, Maria Brooks; 112, Linda  
24 Deaton; 113, Traci Karam; 114, Joseph Mathews; 117,  
25 William Kelly; and 118, Wesley Mikle. Those eleven

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1 people, Tuesday morning by 8:30, right up here outside  
2 this courtroom. Do any of you eleven folks have any  
3 question about whose name I called, or who is supposed  
4 to be here, or when and where you're supposed to be  
5 here?

6 Okay. Next we go to Wednesday, that being  
7 the 22nd. The location is the same. The time is the  
8 same. No. 119, Carolyn Balfoort; No. 121, Noe DeLeon;  
9 No. 122, Roland Volker; No. 124, Rita Shotwell; 125,  
10 Evelyn Michka. Do any of the five of you folks have any  
11 question about whose name was called, or where you're  
12 supposed to be, or when you're supposed to be here?

13 Okay. The following names I'm going to  
14 call, and I knew at one time how many there were. I  
15 think thirteen, but I wouldn't swear to it. We're going  
16 to want you here one week from tomorrow. I'm sorry.  
17 Don't come one week from tomorrow. There will be  
18 absolutely nobody here. One week from Monday. Excuse  
19 me. And we're not doing it Thursday and Friday, because  
20 I am required to be out of town to tend to a case that I  
21 had that I've got to finish up. And that's -- don't  
22 hold our absence of work on Thursday and Friday on these  
23 guys here, because it has nothing to do with them  
24 whatsoever. It's a problem I've got to fix.

25 So on Monday, which will be the 27th,

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1 as fast as possible. You're already an hour late for  
2 lunch if you eat at noon, which means we're an hour late  
3 for lunch; and we've been here doing this since 8:30.  
4 If there is somebody in your life who has some  
5 compelling reason to need to know where you were  
6 yesterday and today, that document will answer that  
7 question. We didn't wait till we found out who was  
8 coming back for the purposes of putting that on there,  
9 because that just would have held you hostage for  
10 another thirty minutes, which means it would have held  
11 us hostage another thirty minutes. But you see, the  
12 thirty-four of you all know who is supposed to be back,  
13 and the twenty-six of you who know you're not supposed  
14 to be back aren't going to have to wait for us to do  
15 that.

16 So if you're due back, on the day you're  
17 back we will give you a brand-new one of those for  
18 covering the day that you're back here. Now that's the  
19 best way I can answer that. Those of you who are not  
20 due back here, my best guess is that you're really  
21 pretty pleased about that. For those of you who are due  
22 back here, we're going to try and make you a whole lot  
23 happier than the people who are not going to have to be  
24 back. I don't know if we can do that, but we're going  
25 to try. Does anybody here have any questions at all for

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1 again, the same time, the same location: No. 127,  
2 Brenda Dixon; No. 128, Roger Baumgarten; No. 129, Mary  
3 Smith; No. 132, Joseph Brasic; No. 134, Patricia Hawley;  
4 No. 136, Robert Williams; No. 138, Michael Smith; No.  
5 139, detail Hauck; No. 140 Lydia Hernandez; No. 142,  
6 Charlsie Hendrix; No. 144, Darrell Parrish; No. 145,  
7 Carol Shutter; and No. 151, John Reeves. Those folks,  
8 Monday, a week, that being the 27th of September, at  
9 8:30. Any of you folks have any questions as to whose  
10 name was called, and who is supposed to be here?

11 VENIREPERSON: Can I ask something?

12 THE COURT: Yes, ma'am.

13 VENIREPERSON: I'm going to ask the D.A.

14 Can I ask the D.A. something?

15 THE COURT: No.

16 VENIREPERSON: My son is a guard in  
17 T.D.C.

18 THE COURT: Just have a seat. If you're  
19 supposed to be back, be back. Is there anybody who has  
20 any questions at all about when you're supposed to be  
21 back? Yes, ma'am?

22 VENIREPERSON: This wasn't filled out.

23 Does that matter?

24 THE COURT: Let me -- thank you. Here's  
25 what we did, because we're trying to get you out of here

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1 me about who is supposed to be back, who is not, or  
2 anything else?

3 Thank all of you.

4 (Court adjourned.)

1 THE STATE OF TEXAS )

2 COUNTY OF HARRIS )

3 I, Pamela Kay Knobloch, Official/Deputy  
4 Official Court Reporter in and for the 179th District  
5 Court of Harris County, State of Texas, do hereby certify  
6 that the above and foregoing contains a true and correct  
7 transcription of all portions of evidence and other  
8 proceedings requested in writing by counsel for the  
9 parties to be included in this volume of the Reporter's  
10 Record, in the above-styled and numbered cause, all of  
11 which occurred in open court or in chambers and were  
12 reported by me.

13 I further certify that this Reporter's Record  
14 of the proceedings truly and correctly reflects the  
15 exhibits, if any, admitted by the respective parties.

16 I further certify that the total cost for the  
17 preparation of this Reporter's Record is \$\_\_\_\_\_ and  
18 was paid by Harris County.

19 WITNESS MY OFFICIAL HAND this the \_\_\_\_ day of  
20 \_\_\_\_\_, 2000.

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20 APPELLANT: CHARLES MAMOU, JR.  
21 CAUSE NO. 800112

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